

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE - SECURITIES DIVISION

In the Matter of Financial Corporation
a/k/a U.S. Financial Corp., a Minnesota
Corporation; Richard J. Kennedy; Norma
Jean Hill; Gene C. Trotter; Richard G.
Stagg; Myron J. Broms; Dean Kennedy;
Andrew P. Anderson; Steve Bryant; Everet
E. Beson; Gerald A. Dietrich; Harry T.
Earle; Douglas M. Hainlin; Robert Hartmann;
Earl W. Hatcher; Walter C. Kocemba; Melvin
Satz; Earl L. Truax; Robert T. White;
Fred G. Zander; Spartan Homes, Inc., a
Minnesota Corporation; Brentwood Homes,
Inc., a Minnesota Corporation; Wellington
Homes, Inc., a Minnesota Corporation;
Ridgedale Construction Company, a Minne-
sota Corporation; and Inland Development
Corporation, formerly an Iowa Corporation.

CONCLUSIONS,

and

MEMORANDUM

FINDINGS OF FACT,

RECOMMENDATIONS AND

In the Matter of the Real Estate Broker's
Licenses of Financial Corporation, a/k/a
U.S. Financial Corp.; Gene C. Trotter;
and Everet E. Beson; and the Real Estate
Salespersons' Licenses of Norma Jean Hill;
Richard G. Stagg; Myron J. Broms; Dean
Kennedy; Andrew P. Anderson; Steve Bryant;
Gerald A. Dietrich; Harry T. Earle;
Douglas M. Hainlin; Robert S. Hartmann;
Earl W. Hatcher; Walter C. Kocamba; Melvin
Satz; Earl L. Truax; Robert T. White; and
Fred G. Zander.

The above-entitled matter came on for hearing before George A. Beck,
dull, appointed as Hearing Examiner in this matter, on October 18, 1977, at
9:30 a.m. in the Hearing Room of the Minnesota Department of Commerce on
the Fifth Floor of the Metro Square Building, Seventh and Robert Streets,
in the City of Saint Paul, County of Ramsey, State of Minnesota. Testimony
was subsequently heard on October 19, 20, 21, 25, 26, 27, 28, and November 1,
2, and December 13, 14, 20, 21, 22, 23 of 1977. Further testimony was
heard
on January 3, 4, 5, 6, 17, 18, 19, 20 and 31, and February 1, 2, 3 and 7 of
1978. Written briefs were submitted on behalf of the Securities Division,
Earl Hatcher, Dean Kennedy, Andrew P. Anderson, Gerald A. Dietrich, Everet E.
Beson, Earl L. Truax, Robert T. White and Fred G. Zander. The final
written
brief in this matter was submitted on August 23, 1978.

Barry R. Greller, Special Assistant Attorney General, 500 Metro Square

Building, Saint Paul, Minnesota 55101, and Charles Wikelius, Staff Attorney with the Securities Division, appeared representing the Securities Division.

Phillip A. Cole, Esq. of the firm of Lommen & Cole, P.A., Suite 514, 2850 Metro Drive, Minneapolis, Minnesota and Ronald L. Haskvitz, Esq. of the firm of Smith, Juster, Feikema, Ltd., 1250 Builders Exchange, Minneapolis, Minnesota 55402, appeared representing Richard J. Kennedy and Dean Kennedy.

Al Quello, Esq., 408 Lake Street, Wayzata, Minnesota 55381, appeared representing Earl L. Truax. Andrew P. Anderson, Robert T. White, Fred G. Zander, Sr., Earl W. Hatcher, Douglas M. Hainlin, Gerald A. Dietrich and Everet E. Beson appeared pro se.

The following names parties failed to appear in the course of this contested case proceeding, and are therefore in default pursuant to 9 MCAR

Sec. 2.208 (Minn. Rule HE 208): Financial Corporation, a/k/a U.S. Financial Corporation, Norma Jean Hill, Gene C. Trotter, Harry T. Earle, Melvin Satz, Spartan Homes, Inc., Brentwood Homes, Inc., Wellington Homes, Inc., Ridge- dale Construction Company and Inland Development Corporation.

Either prior to or in the course of the hearing in this matter, a settlement was reached between the Securities Division and the following parties; Myron J. Broms, Walter C. Kocemba, Robert S. Hartmann, Steve Bryant and Richard G. Stagg. Subsequent to the hearing, the Securities Division reached a settlement of this matter with respondent Dean Kennedy.

Witnesses at the hearing included: Mary Pat Bosch, Norton Gray, W. Gus- tave Doty, Ethel Chase, Diane Severson, Frank Edward Claymcn, Lana Herzog, Robert James Knapp, Earl Lester Truax, Andrew P. Anderson, Robert T. White, Douglas M. Hainlin, Everet E. Beson, Earl W. Hatcher, Gerald A. Dietrich, Fred G. Zander, Sr., Urban Hartman, Paul Martin Gaulrapp, Wilbert Alvin Scheel, Richard A. Penkert, Sam Danna, Jr., Ervin C. Erasim, George C. Coners, Orville Elling, Wilton G. Swenson, Martin D. Christianson, Gene C. Trotter, Laurence P. Ginther, Gerald Porter, Pat Larson, Evert Rutgers, Marie Rutgers, Darlene Jean Spars, Richard J. Kennedy, Gerald L. Pilcher, Emery Meschke, David W. Leland, Marvin Huser, Helen Huser, Aline Lovejoy, Teresa A. Kennedy, Dean Richard Kennedy, Dennis Edward Taylor, Charles Wikelius, L. Michael Spars, Samuel F. Johnson, Allan W. Klein, Vernon M. McGinley and Earl Lidholm.

Based upon all of the testimony, exhibits and briefs herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. U.S. Financial Corp. ("U.S.F.C.") was incorporated as a business corporation in the State of Minnesota on October 9, 1974, with a stated purpose, among others, of acquiring for investment or for sale, contracts for the sale of land and buildings. (Ex. 18, p. 7, 10) The Articles of Incor-

poration show Gene Trotter as the sole incorporator, and Trotter, and Richard

J. and Denise Kennedy, as the first Board of Directors. (El. 18, p. 9-10)

U. S. F. C.'s application for a corporate real estate license, dated October 9,

1974, states that Richard J. Kennedy owned all of the stock of U.S.F.C. Gene

Trotter was identified in the application as the real estate broker for the.

corporation. (Ex. 18, p. 1)

2. By an assignment dated November 28, 1974, which was actually pre-

pared in 1976, Kennedy purported to sell his stock in U.S.F.C. to Gene Trotter for \$1,000 for the stated reason that Kennedy had not yet obtained a

real estate license. (Ex. 19A, 19B, 21; T. 908) A signed but undated

assignment of the shares from Trotter back to Kennedy was kept in the office

of U.S.F.C.'s attorney, however, together with an undated share certificate

for 10,000 shares signed by Trotter. (Ex. 20, 21) Kennedy remained in actual control of the corporation and made the final decision on all matters

from its inception to October of 1976, according to U.S.F.C. office personnel and U.S.F.C. salesmen. (T. 45, 70, 80, 471, 500, 3017, 3142) Trotter took orders from Kennedy, (T. 86-87, 197, 221, 651, 1038, 1296) although Trotter was president of U.S.F.C. (T. 44) Kennedy was paid fees of approximately \$118,143 from the beginning of U.S.F.C.'s existence through August of 1976, plus the use of a Mercedes Benz automobile and the payment of his medical expenses. (T. 239, 242, 252)

3. Norma Jean Hill, known as Jean Hill, was employed by U.S.F.C. from U.S.F.C.'s inception to November of 1976. (T. 42) Hill had worked with Kennedy previously in other states. (T. 3023) Hill generally acted as a liaison between Kennedy and the salesmen. (T. 44, 3021) Hill and Kennedy had large, well-furnished offices at U.S.F.C.'s Bloomington office, while Trotter had a small office with less furniture. (T. 45) Hill also supervised the office staff. (T. 68)

4. U.S.F.C.'s business was to sell vendor's interests in contracts for deed on land to Minnesota investors. (T. 1263) When land or residential property is sold on a contract for deed, the vendor's or seller's interest is assignable. The assignee then becomes entitled to receive the monthly payments from the contract for deed vendee or buyer. The assignment is accomplished by completion of an assignment of contract for deed and a quit claim deed from the seller to the investor. (See e.g. Ex. 61) Ridgedale Construction Company

5. Ridgedale Construction Company was incorporated as a Minnesota business corporation on February 18, 1975. The stated corporate purpose was, among other Things, to develop and sell land, and to execute contracts or receive assignments of contracts relating thereto. (Ex. 85, p. 1, 4) Ridgedale was incorporated by U.S.F.C.'s attorney, (T. 2942) and the sole incorporator was a secretary in the law office of U.S.F.C.'s attorney. (Ex. 85, ID. 3; r. 2937)

6. In early 1975, Richard Kennedy made arrangements with an old friend of his, Norton Gray, to establish Ridgedale's corporate offices at Gray's place of business in an unused office. (T. 111, 114) Gray forwarded Ridgedale's mail to U.S.F.C. at Kennedy's request. (T. 112) Kennedy also arranged for telephone answering services for Ridgedale beginning in March of 1975. (T. 97; Ex. 47A) Kennedy told the secretarial service to send the bill to Dick Kennedy at Ridgedale Construction Company and gave Gray's address. Payments for Ridgedale arrived at the secretarial service in an envelope from U.S.F.C. (T. 101; Ex. 47D)

7. The Ridgedale check ledger was kept by a clerk at U.S.F.C. named Diane Severson. (T. 198, 200; Ex. 17) Severson prepared the Ridgedale checks, sent them to Steve Hewitt for his signature as president, and mailed them out when Hewitt returned the signed check to her. (T. 200, 204) Trotter or Kennedy would tell Severson when to prepare Ridgedale checks. (T. 208) Ridgedale's checking account was funded by a transfer of \$35,000 from U.S.F.C. to Ridgedale. (T. 233, 2115-18; Ex. 17, 17A, and 17B)

Northern Minnesota Contracts for Deed

8. The role of Ridgedale Construction Company in U.S.F.C.'s business re-
lated to the sale by U.S.F.C. to investors of certain vendor's interests
in contracts for deed on land in northern Minnesota. on January 13,
1975,
Richard Kennedy signed two purchase agreements with Realco, Inc., a firm
owned by Wiley G. Doty, to buy 16 lots of undeveloped land in Aitkin
County
in northern Minnesota for \$250 per lot. (Ex. 22B, 22C; T. 107-128, 134)
Kennedy had asked Doty for the cheapest lots he had available. (T. 138-
139)

There was no road access to the lots Kennedy purchased, and Doty told
Kennedy
that Realco would not complete the road. (T. 139, 156; Ex. 22A)

9. The sale price of \$250 per lot was the fair market value of the
unde-
veloped lots at the time of purchase. (T. 142, 160) The closing on the
sale
of the 16 lots to Kennedy occurred on February 26, 1975. (T. 135-137;
Ex.
22E) At Gene Trotter's request, however, Doty backdated the deed to
January
3, 1975. (T. 137-138; Ex. 22D, 22F) The deed was recorded in Aitkin
County
on March 11, 1975. (Ex. 22D; T. 128)

10. Richard J. Kennedy and his wife conveyed these 16 Aitkin
County
lots to Ridgedale Construction Company by contract for deed. Norma
Jean Hill
signed the contracts as vice president of Ridgedale. Fifteen of the
lots
were sold to Ridgedale for \$1,975 per lot and the sixteenth was sold
for
\$2,950. The contracts were all dated and notarized as having been
signed on
January 7, 1975. (Ex. 48) Each of the vendor's interests in the
Kennedy-
Ridgedale contract for deed was sold by U.S.F.C.'s salesmen to Minnesota
investors between January 17, 1975 and February 14, 1975. Each of the
investors paid U.S.F.C. \$1,475 per lot for an assignment of Kennedy's
in-
terest, except that the sixteenth contract was sold for a net investment
of
\$2,450. (Ex. 48; see e.g. Finding of Fact No. 32) All of the sales to
investors were completed before Kennedy had closed his purchase of the
lots
and before Ridgedale was incorporated.

11. On January 26, 1975, Robert J. Knapp advertised for sale in a
Minneapolis paper some undeveloped land in Crow Wing County. (T. 231;
Ex.
25) Gene Trotter called Knapp and Knapp later met with Trotter and
Kennedy.
(T. 322-323) Sometime in February of 1975, Kennedy, Knapp and a Donald
Hawes
flew over the Crow Wing property. (T. 324) On February 21, 1975, Knapp

signed a purchase agreement to sell approximately 2,560 acres of Crow Wing County land to Ridgedale Construction Company. Richard Kennedy signed as president of Ridgedale. The purchase price was \$200,000 with \$10,000 to be paid in cash and the balance on a contract for deed. (Ex. 23; T. 325, 327) U.S.F.C. supplied the earnest money to Ridgedale. (Ex. 26B, 26C; T. 329) The sale was closed on April 21, 1975; however, Inland Development Corporation, an Iowa corporation, was substituted as the purchaser on the day of closing. (Ex. 27; T. 349, 354) Richard Stagg, a salesman with U.S.F.C., signed as president of Inland. (T. 499; Ex. 27, p. 3) U.S.F.C. transferred \$9,000 to Inland to allow Inland to close the sale. (Ex. 28A, 28B, 28C; T. 356)

12. On March 2, 1975, Knapp signed another purchase agreement with Ridgedale for the purchase of approximately 680 acres of undeveloped land in

Mille Lacs County for \$85,000 of which \$4,250 was to be in cash and the balance by contract for deed. (Ex. 30; T. 338, 349) At Richard Kennedy's request, the purchase agreement was dated January 3, 1975. (T. 339) A new purchase agreement with Inland Development Corporation as the purchaser was later substituted. (Ex. 30; T. 349) U.S.F.C. transferred money to Inland to use as earnest money. (Ex. 31A, 31C; T. 346) The sale was closed on April 2, 1975, (Ex. 32B) however, the deed bore the date of January 10, 1975. (Ex. 33; T. 342-343) Knapp was paid interest by Inland back to January 10, 1975. (T. 340) U.S.F.C. also supplied Inland with the cash necessary to close the sale. (Ex. 32A, 32C; T. 348) Richard Staggs was not involved in negotiation of any of the sales. (T. 395)

13. Inland's payments on the contracts for deed with Knapp were continuously late or not made at all. (T. 373; Ex. 37) Knapp talked to Kennedy about the problems with payments since Trotter would not authorize a payment check without Kennedy's approval. (T. 352, 376) The Mille Lacs County property was eventually cancelled out by Knapp since the payments were not made. (T. 377-379; Ex. 40, 41)

14. From January 17, 1975 to May 14, 1975, U.S.F.C.'s salesman sold contract interests to Minnesota investors on the Crow Wing and Mille Lacs properties. (Ex. 49, 50; T. 617) The interests were created by Inland conveying five to ten acre parcels of the properties on a contract for deed to Ridgedale Construction Company at a purchase price substantially in excess of the Knapp to Inland purchase price. Although the price paid by Inland to Knapp for the 680 acres of Mille Lacs land was \$85,000, Ridgedale agreed to pay Inland over \$239,000 to purchase almost all of the 680 acres. (Ex. 49; T. 2062) Although the price paid by Inland for the Crow Wing property was \$200,000, the price paid by Ridgedale to Inland for only 895 of the 2,560 acres was \$325,700. (Ex. 50; T. 2062) U.S.F.C. received net investments on the sale of these contract for deed interests to Minnesota investors in the total amount of over \$470,000 during January to May of 1975. (Ex. 49, 50) The name of Ridgedale Construction Company appeared as the vendee on the highlight sheets shown to customers. (T. 3087) Prior to September 30, 1975, Ridgedale had defaulted on its contract for deed payments to Inland Develop-

ment Corporation. (T. 272; Ex. D) None of the contracts for deed, assign-
ment of contracts for deed or quit claim deeds associated with the sale
of
contract interests on the Aitkin, Crow Wing, or Mille Lacs County
properties
to investors were ever recorded by U.S.F.C. or anyone else. (Exs. 22J,
46,
89)

Spartan Wellington and Brentwood Contracts

15. Beginning in January of 1976, contracts for deed began
appearing in

the U.S.F.C. inventory and on highlight sheets showing Spartan Homes,
Inc. as

the vendee of the contract. Shortly thereafter, the names of Brentwood
Homes, Inc., and Wellington Homes, Inc. also began to appear. (Ex. 2A)
By

April of 1976, the contracts of these three companies constituted over
40% of

U.S.F.C. inventory and by June of 1976, these contracts constituted
almost

all of the contracts that U.S.F.C. had available for sale. (Ex. 20)

16. Spartan Homes, Inc. was incorporated as a Minnesota business corporation on January 13, 1976. The Articles of Incorporation show Jean Hill as the sole incorporator and the sole member of the first Board of Directors. (Ex. 42A) All of the outstanding shares of Spartan Homes were held by U.S.F.C., making it a wholly owned subsidiary of U. S.F.C. (Ex. 42B)

The office of Spartan Homes was established at U.S.F.C.'s office. (Ex. 42C,

p. 2) The purpose of this subsidiary corporation was to purchase and repair real property for U.S.F.C. according to the U.S.F.C. corporate minutes of January 16, 1976. (Ex. 42B)

17. Wellington Homes, Inc. was incorporated as a Minnesota business corporation on September 1, 1976, although its Articles of Incorporation purport to have been signed on April 4, 1976. The Articles list Joe E. Suits

as the sole member of the first Board of Directors and as the sole incorporator-

ator. (Ex. 44A, p. 3-4) Joe E. Suits is related to Jean Hill. (T. 2327) Wellington Homes was a wholly owned subsidiary of U.S.F.C. organized to purchase and repair real property for U.S.F.C. (Ex. 44B) Its corporate office was at U.S.F.C.'s premises. (Ex. 44C, p. 1)

18. Brentwood Homes, Inc. was incorporated as a Minnesota business corporation on April 9, 1976. The Articles of Incorporation list Ervin Erasim as the sole member of the first Board of Directors and as the sole incorporator. (Ex. 43A, p. 3, 4) Ervin Erasim is the former husband of Richard Kennedy's sister. (T. 1643) Erasim's duties as president of Brent-

wood Homes consisted of signing blank checks and other documents (T. 1645, 1648; EK. 94) for which he received \$100 per week. (T. 1647) Brentwood Homes was also a wholly owned subsidiary of U.S.F.C., (Ex. 43B) and its office was located at U.S.F.C.'s office. (Ex. 43C) According to the U.S.F.C.'s

corporate minutes dated April 12, 1976, Brentwood was also organized to purchased and repair real property for U.S.F.C. (Ex. 43B)

19. The role of these three subsidiary corporations in U.S.F.C. operations-

is illustrated by the transactions which occurred in regard to a duplex located at 2709 Bloomington Avenue South in Minneapolis:

(a) On July 31, 1975, Kermit and Gloria Netteberg bought the property on a contract for deed from Vernie, Inc. for \$14,000, of which \$1,500 was a cash down payment. (Ex. 61, p. 1-2)

(b) Also on July 31, 1975, Vernie, Inc. sold the property to Dean

R. Kennedy, Richard Kennedy's son, for \$17,500 with \$500 down, assumption of

the Netteberg's \$12,500 first contract and the creation of a second contract

for deed in the amount of \$4,500. (Ex. 61, p. 3-7) The vendor's interest of Vernie, Inc. in this second contract for deed was sold by U.S.F.C.

sales-

man Everet Beson to Edward L. Sostek on July 28, 1975 for \$3,700.95. (Ex. 61, P. 13-14)

(c) On April 1, 1976, Dean R. and Terese A. Kennedy sold the property for \$22,150 to Spartan Homes, Inc. with \$500 in cash, assumption of the two prior contracts, and the creation of a third contract for deed in

the amount of \$4,892. (Ex. 61, p. 15-20, 25-26) The vendor's interest of

Dean and Terese Kennedy in this third contract for deed was sold by
U.S.F.C.

salesman an Andrew Anderson to Marvin Huser for \$4,004.67 on April 21, 1976.

(Ex. 61, p. 29-30; see Finding of Fact No. 45)

(d) Also on April 1, 1976, Spartan Homes, Inc. sold the property to Wellington Homes, Inc. for \$26,925 consisting of \$500 cash, assumption of the three prior contracts, and the creation of a fourth contract for deed in the amount of \$4,775. (Ex. 61, p. 32-37) Spartan's vendor's interest in this fourth contract for deed was sold by U.S.F.C. salesman Douglas Hainlin to Father Laurence Ginther for \$4,001.75 on March 17, 1976, two weeks prior to the actual creation of the contract. (Ex. 61, p. 42-43; see Finding of Fact No. 71)

(e) Also on April 1, 1976, Wellington Homes, Inc. then sold the property to Brentwood Homes, Inc. for \$29,375 including \$500 cash, assumption of the prior four contracts and creation of a fifth contract in the amount of \$2,450. (Ex. 61, p. 44-45) Wellington's vendor's interest in the fifth contract for deed was sold by Douglas Hainlin to Martin D. Christianson on April 5, 1976, for \$2,143.75. (Ex. 61, p. 46; see Finding of Fact No. 70)

20. The fair market value of 2709 Bloomington Avenue South on April 1, 1976, was \$13,800. (Ex. 61N, p. 6; T. 2554-5) The accumulated liens against the property after the Wellington to Brentwood sale on April 1, 1976, totaled \$28,875.15. (Ex. 61, p. 44)

21. The same pattern occurred in regard to a duplex located at 3908 - 10th Avenue South in Minneapolis which culminated in a sale on April 1, 1976, from Wellington to Spartan for a purchase price of approximately \$26,000. The accumulated liens against the property after the Wellington to Spartan sale totaled \$25,504.92. (Ex. 64, p. 14, 28) The actual market value of 3808 - 10th Avenue South was \$13,700 on April 1, 1976. (Ex. 64A, p. 6; T. 2571) The vendor's interest in the second through fifth contracts for deed created on this property were all sold to investors by U.S.F.C. (Ex. 64; see Finding of Fact Nos. 77 and 82)

22. Five contracts for deed were also recorded against 2523 Bloomington Avenue South in Minneapolis and the vendor's interest of the second through fifth were sold by U.S.F.C. to investors. (Ex. 66; see Finding of Fact

No. 49) The final sale from Brentwood to Wellington occurred on April 4, 1976, for a purchase price of \$27,258.47, of which \$26,758.47 was accumulated contract for deed liens against the property. (Ex. 66, p. 26) The actual market value of 2523 Bloomington Avenue South on April 4, 1976, was \$12,500. (Ex. 66A, p. 6) A similar pattern occurred in regard to the sale of 11 other residential properties. (Ex. 63, 67-76) Only a small number of the contracts for deed, assignment of contracts for deed, or quit claim deeds associated with the sale of contract interests on residential properties were ever recorded by U.S.F.C. or anyone else. (Ex. 102) U.S.F.C. Sales Meetings

23. Beginning in approximately January of 1975, U.S.F.C. held sales

meetings every Monday afternoon which were attended by all the salesmen. (T.

466, 687) Richard Kennedy conducted the meetings. (T. 469, 3029) Jean Hill

attended the meetings, took notes and handed out materials to the salesmen.
(T. 469, 3029) Gene Trotter attended one third to one half of the meetings and would explain real estate technicalities when called upon to do so. (T. 468, 1351, 3029) The purpose of the meetings was to help the salesmen with their sales problems and to motivate and sharpen the sales skills of those attending. (T. 469, 1233, 3028) Kennedy tried to help the salesmen improve their sales technique. (T. 1320)
24. The salesmen would turn in their sales reports for the previous week at the sales meeting and Jean Hill would hand out the new inventories, highlight sheets, and lead cards. (T. 467, 469, 777, 1190 1344, 3030, 3053)
The weekly inventory sheet listed the contracts available for sale. (Ex. 2)
The highlight sheets set out in regard to individual contracts the interest rate on the investment, the net amount required for purchase, the name of the contract vendee, and the property address. (Ex. 2A) Several highlight sheets would be shown to the prospective customer. Salesmen were also given lead cards containing the name and address of prospective customers who had responded to a U.S.F.C. mailing or advertisement, (Ex. 1) The lead card, which was mailed to a potential customer and then returned by the customer if he was interested, contained the following information:

IF YOU ARE NOT RECEIVING UP TO 12%
YOUR SAVINGS AND INVESTMENTS

ON

You are losing the differencel Mr. Investor gets up to 12% and sometimes more by investing his money in Contracts for Deeds and Mortgages, principal and interest paid monthly. Why let such an enriching opportunity pass you by?
For details mail enclosed card. \$1,500.00 minimum investment.

Please rush me information
on how I ran become an
investor on Contacts and
Mortgages Return this card

in the enclosed post-paid
envelope.

FINANCIAL CORP.. Suite 104 7900 Xerxes Avenue South
Bloomington, Minn. 55431-(612) 835-7888

Each salesman carried a sales booklet which contained, among other things, lead cards, copies of the real estate licenses of U.S.F.C., Gene Trotter, and the salesman, an amortization table, a chart showing interest rates, high-light sheets and registration sheets. (Ex. 1; T. 509, 742, 1278, 1108, 952)

If a customer agreed to purchase a contract he was asked to sign a "registration sheet" setting out the customer's name and address for use in recording the contract, a number to identify the contract purchased, and an indication of whether or not the customer wished to have U.S.F.C. manage the contract for \$3 per month. (Ex. 48) U.S.F.C. offered a "management service" to customers for \$3 per month which meant that U.S.F.C. would collect the monthly payments from vendees and send them to the investor. (Ex. 1) As the

salesmen proceeded to talk to prospects during the week, they would call Jean Hill prior to completing a sale to make sure the individual contract had not yet been sold. (T. 1217)

25. During the sales meetings, the salesmen were told that Ridgedale Construction Co., the vendee on the northern Minnesota contracts for deed, was a land developer. (T. 688, 693) Inland Construction Co. was described by Hill as the owner of the land which was being sold to Ridgedale. (T. 669) The northern Minnesota property was described as recreational land by Jean Hill, and it was stated that Ridgedale planned to develop the property. (T. 690, 694, 969, 627) The salesmen were told not to promise development, however. (T. 628) Steve Hewitt and Donald Hawes were introduced at a sales meeting as officers of Ridgedale and Inland. (T. 1089, 1145) The exact relationship of Inland, Ridgedale, U.S.F.C. and KennEdy was not explained. (T. 693, 971, 3287) The salesmen were cautioned not to confuse Ridgedale Construction Co. with the Ridgedale Shopping Center. (T. 3088) There was no discussion of Ridgedale's financial condition at sales meetings. (T. 493, 1134) The salesman were told that there were no mortgages against the northern Minnesota land. (T. 963)

26. In regard to the residential properties on which U.S.F.C. was offering contracts for deed, Kennedy and Trotter stated that an appraisal was done on each property and a credit check was run on each vendee. The credit checks were not shown to the salesmen since Kennedy said they were confidential. (T. 564, 563, 694-695, 979) The salesmen were told that U.S.F.C. purchased contracts for deed from individuals, real estate brokers, speculators and financial institutions. (T. 945) The subject of the relationship of Spartan Homes, Brentwood Homes or Wellington Homes to U.S.F.C. was not discussed at sales meetings. (T. 1394, 1234) Spartan Homes, Brentwood Homes and Wellington Homes were described by Trotter and Hill as speculators. (T. 946, 794) The salesmen were told that U.S.F.C. would record all of the contracts for deed sold. (T. 3270, 3142) For a few weeks in late 1975, salesmen received written appraisals on the residential properties, but this practice was discontinued. (Ex. 0; T. 645-646)

27. The question of the legality of the way U.S.F.C. was selling contracts for deed came up from time to time at sales meetings. (T. 596) The salesmen were told that the state had not decided yet if the contracts for deed constituted securities which had to be registered (T. 3269), but that U.S.F.C.'s attorney was negotiating with the state and they could

continue to sell the product. (T. 476, 596, 3227) At a June 10, 1975 sales meeting, the salesmen were told that an opinion was expected from the Attorney General's Office within two to three weeks as to whether or not the sale of contracts for deed constituted the sale of a security. (Ex. 104, p. 2; T. 3280, 3138) At a June 28, 1975 meeting, the salesmen were told that the Attorney General had referred the question back to the Securities Division and no opinion had been prepared yet. (Ex. 104, p. 4) It was stated that if an unfavorable opinion was issued, the salesmen would have to obtain securities licenses. (T. 663, 3031)

28. At a July 7, 1975 sales meeting, the salesmen were given some guidelines for sales. They were told among other things not to guarantee against loss in the event of default, not to advance funds to the investor, not to promise service in regard to foreclosures, and not to promise an investigation or placement service. (Ex. 104, p. 4; T. 1265, 3090, 3139, 3229, 3241) None of the salesmen were officers, directors or stockholders of U.S.F.C. or any of its subsidiary corporations except for Richard Stagg. (T. 587) The salesmen had no management responsibilities (T. 589, 3019) and usually worked on a commission basis. (T. 588)

Earl L. Truax

29. Earl L. Truax, age 52, has been engaged in real estate sales since 1950. (T. 584, 3007) Truax has a ninth grade education and served in the U.S. Navy before beginning his career in real estate. (T. 583, 3006) From 1950 to 1956, Truax worked for his uncle's firm, Loring Investment, and was engaged in the rehabilitation of older houses which were then sold on a contract for deed. (T. 3008, 3010) Truax was also involved in selling contracts for deed for his uncle's company. (T. 3008) From 1956 to 1958, he was associated as a salesman with J. P. Champion Realty. (T. 3010) From 1956 to 1974, Truax was a salesman for General Acceptance Corporation. (T. 3010) Truax sold subdivided lots located in Florida and Arizona to Minnesota residents and became G.A.C.'s leading salesman. (T. 464, 3009)

30. In 1974, a salesman friend told Truax that Richard Kennedy was forming a company and that Kennedy was sales oriented and had a good deal of money behind him. (T. 3012) Truax interviewed with Gene Trotter, Jean Hill and Richard Kennedy. (T. 3015) Trotter advised him that the business of U.S.F.C. would be to sell contracts for deed. (T. 612) Truax began as a salesman with U.S.F.C. in November of 1974, and remained with the firm through November of 1976. (T. 462, 586)

31. Truax received no training at U.S.F.C. in the sale of contracts for deed. (T. 465) He had no specific information on individual contracts for deed available to him during sales presentations. (T. 488) He usually advised potential customers that most of the contracts for deed had first mortgages ahead of them. (T. 485) Truax told customers that U.S.F.C. would record the contracts for deed for them. (T. 485) Truax explained the creation of a contract for deed by giving the example of the situation in which a prospective buyer of a house was unable to obtain a new mortgage and therefore, the buyer would assume the existing mortgage and enter into a contract for deed for the balance with the seller. (T. 641) He would generally tell his customers that U.S.F.C. would not buy a contract for deed unless the property had been appraised at \$1,000 over the liens. (T. 644) Truax would customarily point out to his customers that a higher yield was available on contracts for deed than from bank savings accounts. (T. 659) Truax received a commission of from 6 to 10% on the contracts for deed he sold. (T. 484)

32. On February 4, 1975, Truax visited Paul M. Gaulrapp, who resides in Owatonna, Minnesota. Mr. Gaulrapp, age 26, is employed as a machinist.

(T. 1479-1480) Gaulrapp purchased a contract for deed on property located in Aitkin County from Truax, with a net investment of \$1,475. (T. 1481, Ex.

90B) in the course of his sales presentation, Truax made a sketch of several lots in the Aitkin County property based on a plat map he had seen earlier.

(T. 1503, 3071) Truax told Gaulrapp that the lot underlying the contract he was purchasing was part of a recreational development in Aitkin County.

(T. 1483, 3068, 3072, 574-575) Truax advised Gaulrapp that although there was

currently no road past his lot, a road would be developed and other develop-

ment would occur in the near future on other lots. (T. 1484, 1497) Truax told some of his customers that the money received from contracts would finance development. (T. 629-630) Truax gave Gaulrapp a copy of the regis-

tration sheet on the day of his visit, and mailed a highlight sheet to Gaulrapp a few days later. (T. 1486) Gaulrapp never did receive the con-

tract for deed instrument or any assignments. (T. 1488) Truax did not advise Gaulrapp that Ridgedale Construction Company was the contract vendee,

(T. 1490) and, in fact, Gaulrapp received his payments from U.S.F.C. (T.

1489; Ex. 48, sheet 12) those payments continued through October of 1976.

(T. 1496)

33. On June 10, 1975, Truax visited Aline M. Lovejoy and Leo J. Lovejoy at their home in Rochester. (T. 1765) Mrs. Lovejoy is employed as a nurse.

(T. 1762) She had returned a mailer sent out by U.S.F.C. indicating her in-terest in contracts for deed. (T. 1763) During the course of his presen-

tation, Truax told the Lovejoys that contracts for deed were good invest-

ments since you could earn more interest than a bank would pay. He told them that banks themselves often invested in contracts for deed, and that

he himself owned several contracts for deed. (T. 1764, 1793) Truax stated

that all of the houses underlying the contracts for deed had been appraised

and were in the \$18,000 to \$24,000 range. He also stated that the credit

ratings of the contract purchasers were checked (T. 562, 3074), and that the

purchasers had "AAA" credit ratings which meant that they paid off their bills within ten days. (Tr. 1764, 1796) Truax told the Lovejoys that all

of the properties underlying the contracts for deed were worth at least \$1,000 more than the liens against them. (T. 1795, 564) He advised then

that U.S.F.C. would have the contracts recorded within 60 to 90 days. (T. 569)

34. Mrs. Lovejoy purchased a contract on June 10, 1975, but later stopped payment on the check. She later purchased a second contract on September 23, 1975, for \$1,250 on property in Crow Wing County, but again, stopped the payment on this check when the Crow Wing County Register of Deeds advised her that the property was under water. (T. 1767-1768) on May 18, 1976, she purchased a third contract from Truax on property located at 3515 Sixth Street North in Minneapolis for a net investment of \$1,944.87. (T. 1771, Ex. 60B, p. 30) Although Mrs. Lovejoy received one payment on this contract in June, she received no further payments and was told by Gene Trotter that U.S.F.C. was cancelling out the contract purchaser. (T. 1772-1773) Nos. Lovejoy never received a contract for deed instrument and Truax

advised her that it might take several months to get the papers recorded because Hennepin County was slow at recording. (T. 1775-1776) Although Truax advised her that she would not be able to obtain a refund on the contract (T. 1783), Mrs. Lovejoy did receive a refund of her investment in October of 1976, after contacting the Hennepin County Attorney. (T. 1774).

35. On April 9, 1975, Truax sold a contract for deed on property located at 3840 - 40th Avenue South in Minneapolis to Clayton P. Daly of Rochester, Minnesota at a net investment of \$3,574.59. (Ex. 72, p. 21-22, T.

552) A year later on April 23, 1976, Truax sold a Spartan Home contract on 3840 - 40th Avenue South to Charles Lukes of Austin, Minnesota for a net investment of \$4,190. (Ex. 72, p. 40-41, T. 548) On the same day, April 23, 1976, Truax also sold another contract for deed on 3840 - 40th Avenue South to C. Bert Hanson, also of Austin, for a net investment of \$4,190. This contract showed Wellington Homes, Inc. as the contract vendee. (Ex. 72, p. 29-30, T. 550)

36. On April 20, 1976, Truax sold a Brentwood Homes contract for deed on 2423 Aldrich Avenue North to E. A. Renner of West Concord, Minnesota for a net investment of \$4,190. (Ex. 73, p. 18-20; Ex. 9, p. 12) On April 23, 1976, Truax sold a Wellington Humes contract at 2423 Aldrich Avenue North to Emma Ferguson of Chatfield, Minnesota at a net investment of \$4,190. (Ex.

73, p. 8-10; T. 544) On March 11, 1976, Truax sold a Spartan Homes contract for deed on property at 3029 Park Avenue South to Edward P. Johnson of Rochester, Minnesota for a net investment of \$4,001.75. (Ex. 70, p. 31-32;

T. 541) The March 8, 1976 U.S.F.C. inventory sheet listed three contracts for sale on 3029 Park Avenue South. (Ex. 2, sheet 5) On April 27, 1976, Truax sold a Brentwood Homes, Inc. contract on property located at 2317 - 10th Avenue South to Arne Sundem of Lancaster, Minnesota for a net investment of \$4,190. (Ex. 68, p. 13-14; T. 532) The April 26, 1976 inventory sheet listed two contracts for deed for sale on 2317 - 10th Avenue South. (Ex. 2, sheet 12)

37. Sometime after April in 1976 (T. 551), Truax began to notice that the inventory often listed more than one contract for deed with the same property address. (T. 494, 3040, 3143) Truax asked Kennedy about this and Kennedy told him that it was easier to market three \$5,000 contracts than one \$15,000 contract on a property. (T. 3040) Truax then proceeded to talk to Jean Hill and to Kennedy and indicated that he did not wish to sell contracts for deed that were more than a second contract on the property. (T. 3040)

Truax believed that there was greater risk on third, fourth or fifth contracts since it would be more difficult for customers to cancel out these contracts. (T. 660, 3124-3125) Truax asked Kennedy if they would prepare separate inventory sheets for him excluding third, fourth or fifth contracts for deed, and Kennedy agreed to do so. (T. 478, 3041, 3143) Truax did not subsequently compare his inventory sheet with that of any other salesman, however, nor did he compare sheets from week to week. (T. 545-546, 3123) Truax was aware that Richard Stagg was a salesman with U.S.F.C., (T. 499) and early in his employment Kennedy told him that he (Kennedy) owned Ridgedale Construction

Company. (T. 489, 3088, 3132) At some point Kennedy told Truax that Spar-tan, Wellington, and Brentwood were owned by his son, Dean Kennedy, and Truax relayed this information to investors. (T. 3093) He often asked U.S.F.C. why contracts were not being recorded promptly when his customers complained.

(T. 594)

Andrew P. Anderson

38. Andrew P. Anderson was first licensed to U.S.F.C. as a real estate salesman on December 31, 1974. (T. 678) His association with U.S.F.C. was his first employment in the real estate field. Prior to joining U.S.F.C., Anderson was an administrator for a private technical school. (T. 679) Anderson received no formal training when he began with U.S.F.C., but asked

questions of Gene Trotter and the salesmen. (T. 682--683) Anderson was licensed to U.S.F.C. through early November of 1976. (T. 679)

39. In the course of his sales presentation, Anderson showed the prospective customer the 12% lead card and the real estate licenses of U.S.F.C. and himself. (T. 705) Anderson would generally explain how a contract for deed is created and advise customers that U.S.F.C. bought contracts for deed from everyone including financial institutions. (T. 706-707) Anderson would show the prospective customer from three to six highlight sheets of different contracts for deed (T. 708) and explained that U.S.F.C. would service the contract for \$3 per month. (T. 728) Anderson advised the customer that U.S.F.C. would record the contract for deed and the assignment. (T. 710) He told the customer that there would almost always be other mortgages on the property in question. (T. 712) Anderson did not, in fact, see the actual contract for deed prior to the sale. (T. 700, 788) Anderson advised his customers that in the event of a default on the contract for deed, they could contact U.S.F.C. for advice. (T. 767) He told customers that U.S.F.C. could repurchase the contract for deed from the customer, but he did not guarantee this. (T. 768-769) Anderson received a commission from 5 to 8% on the sale of the contracts for deed. (T. 704)

40. On February 27, 1975, Anderson visited Evert J. Rutgers, age 64, who is a farmer residing at Bigelo, Minnesota. (T. 2164-2165) Bigelo is located approximately 190 miles from the Twin Cities area near the Iowa border. (T. 2189, 2202) Rutgers had returned a U.S.F.C. mailer requesting information. (T. 2166) Anderson told Rutgers, based upon a conversation with Jean Hill, that U.S.F.C. purchased contracts for deed from savings and loan associations. (T. 749, 2170) Anderson advised Rutgers that the property underlying the contract for deed had been appraised by U.S.F.C. at a value in excess of the amount of the contract for deed. (T. 763, 2198) Although Rutgers believed that his contract would be on residential property, Anderson actually sold Rutgers a contract for deed on undeveloped land

located in Mille Lacs County. (T. 2172, Ex. 51A) Anderson did not mention Ridgedale Construction Company or Inland Development Corporation to Rutgers. (T. 2176) Rutgers purchased doe contract for deed on February 27, 1975, by giving Anderson a check in the amount of \$1,975. (Ex. 51A, p. 9; T. 748, 2168)

41. On November 25, 1975, Anderson visited Wilton G. Swenson, age 67, at his home in Deerwood, Minnesota. (T. 1880-1881) Swenson had answered an U.S.F.C. ad in a newspaper. (T. 1883) During the course of Anderson's presentation, either Swenson or his wife noticed a lead card in Anderson's possession in the name of Lorraine H. Skone of Deerwood. (Ex. 83; T. 1914) Either Swenson or his wife told Anderson that Edward Skone was their banker. (T. 1914, 1891) Anderson told the Swensons that Mrs. Skone had contacted U.S.F.C. and that Anderson had talked to Mr. Skone and intended to visit him. (T. 702, 774, 1916) Swenson purchased a contract for deed on the property located at 2406 Fourth Street North in Minneapolis, by giving Anderson a check in the amount of \$3,927.15 on November 25, 1975. (Ex. 51C, p. 13-14; T. 1884, 769) Anderson visited the Swensons again on February 12, 1976, at which time the Swensons purchased another contract for a net investment of \$7,961 on property located at 2635 - 14th Avenue South in Minneapolis. (Ex. 51D, p. 6-7; T. 1889, 771) Swenson did not receive the original recorded documents in connection with either transaction. (T. 1908, 776) Swenson experienced a problem with late payments on the contracts, and at the time of the hearing, was not receiving any payments. (T. 1904, 1892)

42. In the fall of 1975, Anderson had approximately three meetings with Orville W. Ealing, who resides at Glencoe, Minnesota, which is located approximately 60 miles from the Twin Cities. (T. 1809-1810, 1812, 1844) During their meetings, Anderson told Ealing that U.S.F.C. appraised the property associated with the contracts for deed and checked the credit of the contract purchaser before U.S.F.C. purchased a contract to be resold. (Ex. 96I, p. 7, 26) Anderson stated that based upon this investigation, U.S.F.C. only bought contracts where the equity was sufficient to pay off the liens. (Ex. 96I, p. 17; T. 1852) He stated that U.S.F.C. did not buy contracts if there were several other contracts involved on the subject property. (Ex. 96I, p. 20; T. 1824, 1872) Anderson told Ealing that U.S.F.C. sold contracts for deed to banks with excess funds to invest, (Ex. 96I, p. 7, 11) and that U.S.F.C. purchased contracts from savings and loan associations. (Ex. 96I, p. 10) At one point Anderson, in response to Ealing's question of what was guaranteed, told Ealing that:

Well, we get the use of the security for the loan on the home. In other words, what this guarantee amounts to . . . it amounts to not being able to lose, okay?
(Ex. 96I, p. 4)

Anderson told Elling that both he and U.S.F.C. were licensed and bonded. He also explained U.S.F.C.'s management service for \$3 per month. (T. 1848; Ex. 96I, p. 10, 22)

43. At his last visit on November 21, 1975, Elling purchased six contracts from Anderson with a total investment of \$25,317.20. (T. 1822;

96A through F) Each of the contracts was on a residential property in Minneapolis, and Anderson advised Elling that U.S.F.C. could record each contract and forward it to him. (T. 766, 1823) In fact, U.S.F.C. did not

record any of the contracts and did not send Elling any of the original contracts for deed or assignments thereof. (T. 1834, 1845; Ex. 96I, p. 23, 25)

44. On August 1, 1975, Anderson sold a contract for deed on property located at 2431 Bloomington Avenue South in Minneapolis, to Henry Fisher of Tyler, Minnesota, for a net investment of \$7,744.67. (Ex. 63, p. 11-12; T.

730) On April 20, 1976, Anderson sold another contract on the same property, 2431 Bloomington Avenue South, to Andrew B. Phelps of Waseca, Minnesota for a net investment of \$4,004.67. (Ex. 63, p. 31-32; T. 731) The April 9, 1976

inventory sheet given to the salesmen listed three separate contracts on 2431 Bloomington Avenue South, two in the amount of \$4,004.67, and one in the amount of \$2,236.96. (Ex. 2, sheet 11)

45. On April 21, 1976, Anderson sold a Spartan Homes contract on the property located at 2709 Bloomington Avenue South to Marvin Huser of Lester Prairie, Minnesota, at a net investment of \$4,004.67. (T. 738, 1731; Ex. 61, p. 30-31) Anderson did not advise Huser that there existed other contracts

for deed on the same residential property. (T. 1741; see Finding of Fact No. 19) Huser never received a contract for deed on the property. (T. 1753)

The inventory sheet for April 19, 1976 listed two separate contracts for deed an 2709 Bloomington Avenue South, each in the amount of \$4,004.67. (Ex. 2, sheet 11) At some point in 1976, Anderson noticed that more than one con-

tract on the same property were appearing on inventory sheets and asked Jean Hill about it. She stated that this was a mistake. (T. 713) Anderson also asked her at one point who Spartan Homes, Inc. was and she said it was owned

by real estate investors. (T. 794) Anderson knew that there was a failure in the recording of contracts due to customer complaints and often asked Trotter

about this problem. (T. 711, 786)

Gerald A. Dietrich

46. Gerald A. Dietrich was licensed as a real estate salesperson with

U.S.F.C. from November of 1974 to September of 1976. (T. 1257) Prior to his association with U.S.F.C., Dietrich was licensed for a short time with Allstate Properties. (T. 1259) Before that, he was engaged for a number of years in the construction field. (T. 1259) Dietrich first learned about U.S.F.C. from a newspaper ad. (T. 1260)

47. In the course of a sales presentation, Dietrich showed copies of his and U.S.F.C.'s real estate licenses, explained contracts for deed, and

would then show a customer several highlight sheets which were available

for purchase. (T. 1269) Dietrich advised potential customers that U.S.F.C. would record all of the documents and that a \$3 per month collection service was available. (T. 1272, 1277) He advised his customers that if the vendee should default on the contract, then a customer could cancel out the contract for deed. (T. 1276) Dietrich never had an actual contract for deed for a specific property with him during a sales presentation, (T. 1269) nor did he have any specific information on any individual property or buyer. (T. 1286, 1316) He usually told his customers that it was possible that there would be other financing on the property in question. (T. 1273) Dietrich said that U.S.F.C. bought contracts for deed from individuals, real estate firms and financial institutions. (T. 1274, 1321, 3264)

48. On February 26, 1976, Dietrich met with Emery Meschke at his home near Mankato, Minnesota. (T. 2275,; Ex. 53C, p. 1; T. 1316) Pt. Meschke, age 47, is employed as a clerk with the U.S. Postal service . (T. 2276) Dietrich pointed out that Meschke could receive almost twice as much interest on this investment as compared to a savings and loan savings account. (T. 2281) Dietrich told Meschke that banks bought contracts for deed as investments. (T. 2281, 2293-2294, 3256) There was no mention of the possibility of other contracts for deed on the property. Meschke gave Dietrich a check in the amount of \$2,370.78 for a contract on property located at 2310 Lyndale Avenue North, with Beach as the contract vendee. (Ex. 53C, p. 2; Ex. 53C, p. 3) Meschke did not receive the documents concerning the property until September of 1976, and he has received no payments On the contract since October of 1976. (T. 2283-2284)

49. On March 12, 1976, Dietrich met with Gerald L. Pilcher at a restaurant in Duluth. (T. 2253, 1300) Pilcher, age 54, is employed as a shop foreman in Duluth. (T. 2252) Dietrich described contracts for deed to Pilcher and pointed out the favorable interest rate involved. (T. 2258-2259) There was no discussion of the specifics of the individual property involved or of the possibility of other contracts for deed on the same property. (T. 2260, 2266) Pilcher was aware, however, that there could be other liens against the property. (T. 2271) Dietrich told Pilcher that U.S.F.C. could not guarantee a repurchase in the event of default by the vendee, but that U.S.F.C. was in the market for contracts for deed and could repurchase the contract just like any other buyer. (T. 1300, 2256, 3254) Pilcher signed the title registration sheet on March 12, 1976, and later mailed U.S.F.C. a check in the amount of \$2,240.03. (Ex. 66, p. 35) The contract purchased by Pilcher was on 2523 Bloomington Avenue South, with Wellington Homes, Inc., as the vendee. (Ex. 66, p. 34; T. 2255, 1298; see Finding of Fact No. 22) Pilcher did not receive the documents for the property until several months after purchase. (T. 2260)

50. on June 29, 1976, Dietrich met with Urban H. Hartman in New Prague, Minnesota. (Ex. 53B, p. 14; T. 1308, 1414) At that time, Hartman, age 46, owned a hardware store in New Prague. He is now employed as an officer with

the Scott County Crime Prevention Unit. (T. 1415) Dietrich pointed out the 12% interest on the contract for deed and stated that if the vendee failed to make payments, Hartman could foreclose, but that this was unlikely to happen. (T. 1419, 1436) Dietrich stated that the homes involved with the contracts he was selling were in the \$30,000 range. (T. 1420, 1313) There was no discussion of other liens against the property, although Hartman believed that there was also a mortgage against the properties. (T. 1427, 1455) Hartman stated that there was little discussion of the vendee on the property, but that Dietrich stated that U.S.F.C. researched the vendees carefully. (T. 1427) Dietrich stated that U.S.F.C. would record all of the documents in connection with the property. Dietrich explained that Spartan Homes was a corporation that U.S.F.C. worked with and that Spartan would purchase homes and resell them. Dietrich did not state who owned Spartan Homes, Inc. (T. 1421)

51. . The contract which Hartman purchased on June 29, 1976, was on di property located at 636 Van Buren, with Spartan Homes, Inc. listed as the vendee. U.S.F.C. had purchased 636 Van Buren on June 14, 1976, on a contract for deed for \$16,000. (Ex. 53B) Hartman made an investment of \$5,447 to purchase this contract. (Ex. 53B, p. 14; T. 1416) From August to October of 1976, Hartman made several trips to the U.S.F.C. offices to collect late payments on the contract. (T. 1424) On August 24, 1976, Dietrich delivered the papers in connection with the contract to Hartman. (T. 1423-1424) On that date, Hartman purchased a second contract from Dietrich in the amount of \$4,106.20 on property located at 4106 - 40th Avenue South. (Ex. 53A, p. 1, 9-10; T. 1416) Hartman is still receiving payments on the second contract that he purchased; however, payments on the first contract ceased in October of 1976. (T. p. 1424, 1464)

52. On April 20, 1976, Dietrich sold a Brentwood Homes, Inc. contract for deed on property located at 2431 Bloomington Avenue South to Bernice E. Heim of St. Charles, Minnesota for a net investment of \$4,004.67. (Ex. 63, p. 21-22; T. 1297) The April 19, 1976 U.S.F.C. inventory sheet listed three contracts for deed for sale on 2431 Bloomington Avenue South. (Ex. 2, sheet 11)

53. Dietrich told customers that U.S.F.C. could buy back the contract if they wished to, but did not guarantee this. (T. 3254) During the summer or fall of 1976, Dietrich first became aware that U.S.F.C. was selling more than one contract for deed on an individual property. (T. 1282) He noticed the same property address listed more than once on a single inventory. (T. 1282) Dietrich asked Trotter or Hill about this, and was told that since the contracts for deed were quite large on these properties, they were split up and sold in this manner in order to facilitate the sale. (T. 1283) Dietrich testified that he did not learn that Spartan Homes, Brentwood Homes and Wellington Homes were affiliated with U.S.F.C. until October of 1976. (T. 1289, 3252, 3259) Prior to October of 1976, Trotter had told Dietrich that

these companies were in the business of buying, improving and selling homes

and then selling the contracts for deed to U.S.F.C. (T. 1285)

Everet E. Beson

54. Everet E. Beson, age 55, was first licensed as a real estate sales-

man in Minnesota in 1972. (T. 1049, 1056) Beson holds a B.A. degree in mechanical engineering from the University of Minnesota and has completed

two years work toward an advanced degree in business administration at the University. (T. 1054, 3226) He is a retired colonel in the United States Air Force Reserve. (T. 3226) From 1970 to 1971, Beson sold insurance and securities in California. From 1972 to 1973, Beson sold Cali-

ifornia land in Minnesota. During 1973 to 1975, Beson sold scotch whiskey

warrants in Minnesota on a part-time basis. (T. 1051-1052) Beson was licensed with U.S.F.C. from March of 1975 to October of 1976. (T. 1054) He first learned of U.S.F.C. through a newspaper ad, and interviewed with

Jean Hill before being hired. (T. 1055)

55. Beson's presentation to a potential purchaser normally took between one and two hours. (T. 1097, 3232) In the course of a presentation, Beson would normally introduce himself and U.S.F.C., explain how a contract for deed is created, point out the high interest rate available on contracts for deed, and show the customer several highlight sheets with different investment amounts. (T. 1094-1096) Beson usually advised customers that there was already at least one mortgage and one contract for deed on the property in question. (T. 1099) Beson did not have any information as to existing liens on any specific property when making sales presentations, nor did he have the contract for deed on any specific property in his possession.

(T. 1098-1099) If a customer inquired, Beson would advise them that the contract for deed would be recorded by U.S.F.C. Beson told customers that the contracts were less risky than some investments since they were backed by real estate. (T. 1103, 1106) Beson made no independent investigation to determine whether or not the contract for deed was being recorded; however, he knew that some were recorded since he had personally delivered them to the courthouse. (T. 1105) Beson testified that he did not become aware that U.S.F.C. was offering more than one contract for deed on a single property until after he had ceased selling contracts for deed and began buying and selling houses for U.S.F.C. (T. 1110) Beson received a commission of between 5 and 8% on the sale of contracts for deed. (T. 1112)

56. On April 2, 1975, Beson sold the vendor's interest in a contract for deed on land located in Mille Lacs County, Minnesota to Wilbert A. Scheel. (T. 1521; Ex. 52A, p. 12) Ft. Scheel, age 53, resides at Paynesville, Minnesota, where he operates a motel. (T. 1520) Paynesville is located approximately 83 miles from Minneapolis. (T. 1543) Scheel gave Beson a check in the amount of \$1,975 in full payment for the contract for deed on April 2, 1975. (Ex. 91F) At the time of the sale, Scheel received a highlight sheet for the contract showing the name of the contract vendee as Ridgedale Construction Company. (Ex. 91; T. 1521) Several weeks later, Scheel received photocopies of quit claim deeds, assignments of contract deed, and a contract for deed in the mail. (Ex. 91A through E; T. 1523) At the time of the sale, Beson told Scheel that U.S.F.C. would take care of the title and recording of documents. (T. 1527) Beson mentioned the role of Ridgedale Construction Company as a contract vendee, and told Scheel that this land might be developed in the future, but that there were no present plans to do so. (T. 1526, 1118, 1536) Scheel mistakenly believed that the name Ridgedale referred to a shopping center located just west of Minneapolis and mistakenly believed that the property was also located there. (T. 1525, 1122) Beson did not tell Scheel that the land was connected in any way to Ridgedale Shopping Center. (T. 1122, 1531) Scheel realized his error when he received the photocopies of the deeds which indicated that the land was in Mille Lacs County, Minnesota, but did not complain to anyone when he learned of his mistake. (T. 1534) Scheel received payments on this contract through

August of 1976. (T. 1529)

57. On April 15, 1975, Beson visited David W. Leland, age 38, who resides at Elk River, Minnesota. (T. 1702, 1124; Ex. 52B, p. 14) At. Leland

is employed as a salesman for a sporting goods wholesaler. (T. 1702)

Beson

pointed out to Leland the high interest rate on contracts for deed and stated that it was less risky than the stock market since it was secured by real estate. (T. 1707, 1106) Beson specifically told Leland that there

was no guarantee with this contract for deed interest and that there was risk

involved. (T. 1707, 1713) Beson told Leland that development of the Crow

willing property by Ridgedale Construction Company was a possibility in the

future. (T. 1708, 1118) Beson specifically told Leland that Ridgedale Construction Company was not connected with Ridgedale Shopping Center. (T.

1714) Beson did not advise Leland that Ridgedale Construction Company and U.S.F.C. were affiliated in any way (T. 1723) nor did Beson did not tell Leland that U.S.F.C. had paid cash for this property. (T. 1133, 1719)

Leland gave Beson a check in the amount of \$2,450 on April 15, 1975, and received a title registration sheet and a highlight sheet at that time. (T.

1705; Ex. 52B, p. 14) Leland received the contract for deed, quit claim deeds and assignment of contract for deed in connection with this property in

approximately August of 1975. (T. 1709) He received payments in connection

with this contract for deed through October of 1976. (T. 1709)

58. In approximately March of 1976, Beson asked U.S.F.C. to assign him

duties which would not require him to travel. (T. 1071) At that time, he

stopped selling contracts for deed and began buying, fixing up and reselling

houses for U.S.F.C. (T. 1061-1062, 1071) Beson generally looked for homes

worth between \$17,000 and \$35,000 and tried to buy these homes from \$1,000

to \$2,000 under the list price. The downpayment for properties purchased by

U.S.F.C. was typically between \$1,000 and \$3,000. (T. 1080) The homes were

then repaired, if necessary, and resold on a contract for deed. (T. 1074-

1075) Beson noticed that Spartan Homes, Inc. was the seller in some of these

transactions after the home was repaired. (T. 1079) Beson did not ask anyone who Spartan Homes, Inc. was, but he assumed that the corporation was

connected to U.S.F.C. (T. 1087, 1079) Beson received a commission upon resale of the house. (T. 1083) When the house was resold on a contract for

deed, the vendor's interest was assigned to U.S.F.C. for resale. Beson was

also engaged in the purchase of contracts for deed for the U.S.F.C. inventory.

Beson typically purchased contracts for deed worth between \$2,000 and

\$12,000 at a 30% to 40% discount. (T. 1064) Beson judged whether or not to purchase a contract by looking at the buyer's credit and payment history, whether or not the downpayment was over 10%, the location of the property, and the price of the property. (T. 1066, 1068) Beson would order both a credit report on the buyer and an appraisal on the property before purchasing a contract. (T. 1148) Beson did not purchase any contracts for deed from financial institutions. (T. 1091)
Earl IL Hatcher

59. Earl W. Hatcher, age 61, was first licensed as a real estate salesperson in 1975. (T. 1179, 1183) He first worked as a real estate agent while licensed to the David C. Bell Company in February of 1976 to April of

1976. (T. 1183) Hatcher first learned of U.S.F.C. from his friend, Douglas

Hainlin. Hatcher then applied to and was hired by U.S.F.C. in April of 1976,

and began work on April 11, 1976. (T. 1182, 1185) He worked as a licensed

real estate agent for U.S.F.C. until late October of 1976. (T. 1182, 3208)

Hatcher's training at U.S.F.C. was limited to one day during which he accompanied another salesman. (T. 1187)

Prior to entering the real estate field in 1975, Hatcher was employed as a buyer of men's and boy's clothing

with Dayton-Hudson Corporation for 26 years. (T. 1184)

60. In the course of his sales presentation, Hatcher formally told customers

that the contracts for deed were on residential property valued at

between \$25,000 to \$50,000. (T. 1192, 1226) He often compared the interest

available on the contracts for deed to the bank savings account interest rate. (T. 1198)

Hatcher told customers that U.S.F.C. purchased contracts from individuals, builders, contractors, and developers. (T. 1203)

He stated that U.S.F.C. would register the contracts for deed and deliver the

originals to them. (T. 1200) Hatcher told his customers that a collection

service was available from U.S.F.C. at \$3 per month. (T. 1220) He typically

showed a customer three or four highlight sheets on different contracts for

deed. (T. 1206) Hatcher never saw or used a credit check or appraisal on

residential property. (T. 1216) He did advise customers that U.S.F.C. would

not purchase a contract for resale with a buyer who did not have a good credit rating. (T. 1225)

Hatcher received a commission of 5 to 7% of the

net investment in the contract for deed. (T. 1217) He testified that he

first learned that more than one contract for deed was being sold in connection with one residential property just before he resigned in

September of 1976. (T. 1210)

61. On May 13, 1976, Hatcher visited George C. Conners, a farmer who

resides at Hendricks, Minnesota, which is located approximately 200 miles

west of the Twin Cities area. (T. 1670-1671; Ex. 57A, p. 10) Conners had

answered an advertisement placed by U.S.F.C. in a newspaper. (T. 1671)

Conners actually lives in St. James, Minnesota. (Ex. 5, p. 18) Hatcher explained to Conners the manner in which U.S.F.C. sold contracts for

deed.

(T. 1673, 1198-1210) Hatcher told Conners that Brentwood Homes, Inc., the name appearing on the highlight sheet as vendee for the contract for deed, was a housing development comprised of homes which were 15 -to 20 years old.

(T. 1679-1680, 1682) Hatcher stated that the homes had been-i appraised at

\$35,000 and up. (T. 1681, 1226) Hatcher also told Conners that the person

making payments on the contract for deed had been checked out by U.S.F.C. and

had a good credit rating. (T. 1683, 1225) Hatcher advised Conners that he

could inspect the residential property, but that it was not necessary since

it had been appraised. (T. 1684) Hatcher selected a contract on property

located at 928 Edmunds and gave Hatcher a check in the amount of \$4,441.40 in

full payment. (T. 1674, 1221; Ex. 57A, p. 9-11)

62. Conners stopped payment on this check a day or two later, however.

Hatcher returned to visit him in three or four days and Conners gave Hatcher

a second check in the same amount. (T. 1675) Conners received two monthly

payments on the contract he purchased from Hatcher. (T. 1675) in late July or early August of 1976, Earl Truax visited Conners and substituted a new contract on property located on 525 Oliver Avenue North for the contract

that Hatcher had sold Conners. (T. 1678, 1223; Ex. 57A, p. 14) Truax told

Conners that the buyer on 928 Edmunds was a poor credit risk and that U.S.F.C. was switching contracts for this reason. (T. 1678)

Conners re-

ceived only one payment on the 525 Oliver Avenue North contract.

(T. 1694)

U.S.F.C. had agreed to purchase the 928 Edmunds property on April 21, 1976,

for \$18,500 and it was actually sold on September 14, 1976, for \$18,500.

(Ex. 93A-93G; T. 1611, 1638)

63. On April 20, 1976, Hatcher sold a contract for deed on property

located at 3109 Portland Avenue South, with Spartan Homes, Inc. as the vendee, to James C. Von Drasek of Winona, Minnesota for a net investment of

\$4,004.67. (Ex. 71, p. 20-21; T. 1218-1219) The inventory sheet for Monday,

April 19, 1976 listed two separate contracts for sale on 3109

Portland Avenue

South, one in the amount of \$4,004.67, which was sold to Von Drasek, and another in the amount of \$2,236.96. (Ex. 2, sheet 11).

64. Hatcher continued to sell contracts for U.S.F.C. until mid-October

of 1976, at which time he resigned. (T. 3208) Hatcher testified that he was

not aware that the properties could have other liens in addition to the contract interests he was selling. (T. 1201) He sent a letter to all his

customers subsequent to his resignation advising them who they could contact

both at U.S.F.C. and the Securities Division if they faced problems with their contracts. (T. 3200, 1693) Before going to work for another company

which was also in the business of selling contracts for deed, Hatcher and

Douglas Hainlin visited the Securities Division to determine whether or not

the new company was selling contracts in a proper manner. (T. 3206, 1249)

Douglas M. Hainlin

65. Douglas M. Hainlin was licensed as a salesman to U.S.F.C. from March of 1975 to October of 1976. His association with U.S.F.C. was the first time that Hainlin had been involved in the real estate field. (T. 929-930) Hainlin is a high school graduate and obtained two years of college

credit during service in the U.S. Navy. (T. 932) Prior to becoming a real

estate salesman, Hainlin had been a salesman with several companies. (T.

931) He interviewed with Jean Hill of U.S.F.C. after answering an ad placed

by U.S.F.C. in a newspaper. (T. 933) Hainlin received no formal training at

U.S.F.C. concerning contracts for deed. (T. 934)

66. In the course of his sales presentation, Hainlin customarily showed a potential customer photocopies of licenses for U.S.F.C., Gene Trotter himself. He explained contracts for deed to the customer and would show several highlight sheets for different contracts to the customer.

(T. 940)

Hainlin often pointed out that the contract for deed interest was better than bank interest. (T. 943) Hainlin stated to his customers that U.S.F.C.

would record the contract for deed within 90 days. (T. 942) Hainlin did not

have any of the individual contracts for deed in his possession during sales

presentations (T. 949), nor did he have any information concerning liens or

credit rating of the buyer for any individual residential property. (T. 962) Hainlin's customers did complain about not receiving documents after the sale. (T. 950) When Hainlin inquired, Kennedy and Trotter told him it took a long time to get the documents recorded. (T. 981, 3283)

67. On March 20, 1975, Hainlin visited Dr. Richard A. Penkert, a veterinarian who resides at Hector, Minnesota. (T. 1549; Ex. 92A) Hector is located 80 miles west of Minneapolis. (T. 1600) Hainlin advised Penkert that the residential property underlying the contracts for deed were worth a good deal more than the value of the contract. (T. 1561, 1003, 3272) Hainlin did not mention the possibility of any other contracts on the property to Penkert (T. 1002), nor did Hainlin discuss the credit rating of the vendee on the contract for deed. (T. 1568) The vendee was listed as Ehm Henning on the highlight sheet related to the contract for deed. (Ex. 92A, p. 1) Penkert was receiving payments on this contract for deed at the time of the hearing. (T. 1563) Hainlin advised Penkert that U.S.F.C. would record the contract for deed and other documents. (T. 1567) Penkert purchased 11a residential contract on March 20, 1975, by signing the registration agreement at a net investment of \$3,756.04. (T. 994; Ex. 92A) The check in payment for the contract was dated April 1 1975. (Ex. 55C; T. 1554)

68. Hainlin returned to visit Penkert on April 1, 1975, at which time he sold Penkert two more contract for deed interests, one at a net investment of \$3,450 secured by approximately 12.5 acres of undeveloped land located in Mille Lacs County. (T. 997, 1555; Ex. 92B; Ex. 55B) The other contract was a net investment of \$1,475 on approximately five acres of undeveloped land located in Crow Wing County, Minnesota. (Exs. 55A; 92C; T. 1557) Penkert told Hainlin that he did not want a contract on undeveloped land, but Hainlin assured Penkert that these two parcels of land were to be developed as recreational land in the near future, and that sale of the contracts was a means of providing the contractor with money. (T. 1562, 1577) Hainlin stated that Ridgedale Construction Company, the name listed as the vendee on the highlight sheets for the contracts, was the contractor, but did not state anything concerning the ownership of Ridgedale Construction Company. (T. 1568) Hainlin did not advise Penkert that Ridgedale had defaulted on its payments for the Mille Lacs County property. (T. 1601) Penkert stopped receiving payments on the undeveloped land contracts in the fall of 1976. (T. 1599)

69. On March 16, 1976, Hainlin visited Martin D. Christianson who resides at Leroy, Minnesota. (T. 1921, 1925) Leroy is located approximately 120 miles from the Twin Cities area. (T. 1946) Mr. Christianson, age 42, is employed as a milk hauler. (T. 1922-1923) Christianson had mailed a Card back to U.S.F.C. indicating his interest in contracts for deed. (T. 1923, Ex. 1) Hainlin compared the contract for deed interest to bank savings account interest. (T. 1924) Hainlin told Christianson that on a \$2,000 investment, the house against which the contract would be recorded would be worth approximately \$30,000. (T. 1948, 1961, 1975) He stated that most of

the properties were occupied. (T. 1949, 1014, 3272) Hainlin advised Christianson that there could be other mortgages or contracts or a piece of residential property and that if the payments ceased, Christianson could foreclose against the property. (T. 1950, 1952, 1980) Hainlin stated that no one would allow a \$30,000 property to be foreclosed by a \$2,000 contract for deed. (T. 1961) Hainlin also told Christianson that where the payments had lapsed, U.S.F.C. had, on occasion, replaced the contract with a different one. (T. 1952)

70. Christianson purchased a contract on March 16, 1976, at a net investment of \$2,240.03 by giving Hainlin a check in the amount of \$240.03. (Ex. 61D, p. 1; T. 1925) This contract was later replaced by another one at Christianson's request in order to yield a higher interest rate. (T. 1928) The second contract, which Christianson purchased on April 5, 1976, was on property located at 2709 Bloomington Avenue South, with a net investment of \$2,143.75. (Ex. 61D, p. 2; T. 984, 1928, 1931, see Finding of Fact No. 19) Hainlin did not explain to Christianson anything about Brentwood Homes, Inc., which was the vendee on the contract for deed. (T. 1959) Hainlin delivered photocopies of the contract for deed and other documents to Christianson in August of 1976, (T. 1937) however, the original documents were never recorded by- U.S.F.C. (T. 1941; Ex. 61F) Christianson did not receive any payments on the contract after November of 1976. (T. 1955)

71. On March 17, 1976, Hainlin visited Father Lawrence P. Ginther, age 57, who resides at Blooming Prairie, Minnesota. In the course of his sales presentation, Hainlin told Father Ginther that the property on the contracts for deed was worth more-than the investment. (T. 2024) Hainlin did not mention the possibility of other contracts on the property. (T. 2010) Father Ginther purchased a contract on property located at 2709 Bloomington Avenue South in Minneapolis, at a net investment of \$4,001.45. (T. 987, 2000; Ex. 61, p. 42-43; see Finding of Fact No. 19) Father Ginther did not receive the contract for deed or other documents from U.S.F.C. (T. 2006), and he has not received any payments on the contracts since September of 1976.

72. On April 21, 1976, Hainlin called on Gerald Porter of Cloquet,

Minnesota. (T. 2076) Cloquet is located approximately 140 miles from the Twm Cities. (T. 2094) Porter, age 55, is employed as a construction pipe fitter. (T. 2077) Hainlin pointed out to Porter the favorable interest rate offered by U.S.F.C. compared to 5 1/2% bank interest. (T. 2092) He stated that U.S.F.C. would record the contract for deed and other documents. (T. 2094) Hainlin told Porter that if the payments stopped on the contract for deed, it was a possibility that U.S.F.C. would buy the contract back from Porter. (T. 2095, 1008-1009, 3271, 2106) U.S.F.C.'s policy, however, which was communicated to the salesman, was that U.S.F.C. would not buy back contracts from investors, so as to guarantee against loss, or "make a market" in contracts for deed. (T. 291; Ex. MM; Finding of Fact No. 28) Porter purchased a contract for deed on 1500 East 26th Street at a net investment of \$4,190. (Ex. B, p. 6, 8; T. 1004, 2084) The vendee listed on the highlight sheet was Spartan Homes, Inc.; however, Hainlin did not explain to Porter

anything about Spartan Homes, Inc. (T. 2093) Porter received three monthly payments on this contract for deed before the payments stopped. (T. 2090) Porter did not receive the contract for deed document from U.S.F.C. (T. 2087)

73. During the week of June 14, 1976, Hainlin sold a Spartan Homes contract for deed on 2033 Reaney to Wayne Ganske of Glenwood, Minnesota for a net investment of \$4,190. (Ex. 6, p. 8; Ex. 74, p. 18-19; T. 988) The U.S.F.C. inventory sheet for the week of June 14, 1976 listed two separate contracts for deed, each in the net amount of \$4,190, for sale on 2033 Reaney. (Ex. 2, sheet 15) On June 15, 1976, Hainlin sold a Spartan Homes contract for deed on 850 Edmund in St. Paul to Phyllis L. Hukreide of Eagle Bend, Minnesota for a net investment of \$5,028. (Ex. 75, p. 8-9; T. 991) The June 14, 1975 U.S.F.C. inventory sheet listed two contracts for sale on 850 Edmund totaling \$8,965.50. (Ex. 2, sheet 15)

74. Hainlin did notice that Ridgedale Construction Company was listed as the vendee on the northern Minnesota property highlight sheets. (T. 958) Hainlin testified that he learned little about Ridgedale Construction at the sales meetings (T. 959), except that Ridgedale intended to develop the land. (T. 969) Hainlin never did learn who owned Ridgedale Construction Company. (T. 971) At one point, Hainlin did inquire as to why there was more than one contract for deed on some of the residential properties, and was told that this was a means of putting together a whole package of financing. (T. 960) During the last few months of his association with U.S.F.C., Hainlin did learn that Jean Hill was the president of either Spartan Homes, Inc., Wellington Homes, Inc. or Brentwood Humes, Inc. (T. 965, 967) On another occasion, Hainlin also observed Richard Stagg, who he knew to be a salesman with U.S.F.C., signing documents as the president of Inland Development Corporation. (T. 968, 3286) On one occasion, Hainlin discovered that a contract he had sold was not yet owned by U.S.F.C. (T. 1042, 1044) Robert P. White

75. Robert P. White was licensed as a real estate salesperson to U.S.F.C. from January of 1976 to October of 1976. (T. 817, 835-836) White's only prior experience as a real estate salesperson consisted of brief employment in 1971-72 with a firm which sold undeveloped land. (T. 819) White has also sold men's wear and home study products in his career. (T. 818) He holds an associate of arts degree from the University of Minnesota. (T. 820) White sold contracts for deed for U.S.F.C. from January of 1976

through March of 1976. (T. 827) His only training consisted of traveling

with another salesman to observe his sales technique. (T. 824)

76. In the course of his sales presentation to potential customers, White would explain contracts for deed, the method of discounting used by U.S.F.C. and the yield achieved. (T. 860) White told his customers that buying contracts for deed involved risk, but was more secure than investing

in the stock market since land stood in back of the investment. (T. 860, 867) White stated that U.S.F.C. checked out the contracts for deed before

buying them for resale. (T. 865) White never had the actual contract for

deed in his possession during his sales presentation nor did he have any specific information about liens against any specific property. (T. 861-862) He did tell his customers that there was possibly other financing on the property, and used the example of a house sold with a mortgage, some cash and the balance on a contract for deed. (T. 862) White did not advise customers that there could be a third or fourth contract for deed on the property. (T. 864) White stated that U.S.F.C. would record the document, but he did not check to see if U.S.F.C. was actually doing this. (T. 862, 866) White stated that it was common knowledge around the office that the contracts for deed were not being recorded by Trotter. (T. 898) If a customer inquired, White advised them that they could inspect the property, but that the contract might then be sold. (T. 870)

77. On March 19, 1976, White visited Reverend Robert H. Nathan, who resides at Houston, Minnesota. White sold Nathan a contract for deed with a net investment of \$2,240.03. (T. 876 ; Ex. 64, p. 41) Nathan gave White a check in the above amount with instructions to hold the check until April 5, 1976. The contract for deed was on property located at 3908 - 10th Avenue South with Spartan Homes, Inc. listed as the contract vendee. (Ex. 64, p. 40) The U.S.F.C. inventory for March 15, 1976 listed the Above contract for sale as well as a contract against 3908 - 10th Avenue South in the net amount of \$4,001.75. (Ex. 2, sheet 6) The property had an existing first mortgage in the amount of approximately \$9,000. (Ex. 64, p. 4, 14) In addition to the Nathan sale, U.S.F.C. sold three other contracts for deed against 3908 - 10th Avenue South each of which was in excess of \$4,000. (Ex. 64, p. 17, 25, 28-29, 36) The market value of the property at 3908 - 10th Avenue South as of April 1, 1976 was \$13,700, (Ex. 64A) while the accumulated liens amounted to \$25,504.92. (Ex. 64, p. 14, 28; see Finding of Fact No. 21)

78. In March of 1976, White asked U.S.F.C. for a change of duties so that he would not have to travel. (T. 828) From March of 1976 until he left U.S.F.C., White was engaged in the buying, rehabilitation, and sale of houses for U.S.F.C. (T. 827) When these houses were resold, they were

sold in the name of Spartan Homes, Inc., Brentwood Homes, Inc. or Welling-ton Homes, Inc., and the vendor's interest was then resold by U.S.F.C. to investors. (T. 827, 841, 855; Ex. 64) Most of the homes purchased by White were in a price range of \$17,000 to \$23,000. (Tr. 834) White usually would only put down from \$1,000 to a maximum of \$2,500 for purchase. (T. 829) The cost of repair had to be such that a profit could be made considering the potential resale value. (T. 829, 832) The properties were typically resold anywhere from a few days after purchase to eight weeks later. (T. 831) White's proposals for purchase of any particular property were submitted to Jean Hill for approval. (T. 847) The properties were usually resold by placing an ad in the newspaper saying that the property was "for sale by owner". U.S.F.C. would run credit checks on potential buyers. (T. 857) The buyers were typically not represented by a real estate agent or an attorney at the closing, which was conducted on behalf of U.S.F.C. by Myron Broms. (T. 849-850) White would receive a commission on the resale of

the property. (T. 844) White initially had no knowledge of the ownership of

Spartan, Brentwood or Wellington and was told that it was none of his busi-

ness when inquired of Jean Hill. (T. 842) He learned who owned the companies before his employment by U.S.F.C. had ended. (T. 843, 871)

Fred G. Zander

79. Fred G. Zander, age 56, was licensed to U.S.F.C. from January of 1976 to October of 1976. (T. 1331, 1332) Zander was first licensed as a real estate agent in 1953, but was not active in the real estate field until 1971. (T. 1338) Between 1971 and 1976, Zander was involved in the sale of undeveloped northern Minnesota land. (T. 1333, 1335) Mr. Zander is a high school graduate. (T. 1339)

80. Zander answered an U.S.F.C. newspaper ad and interviewed with Jean Hill for employment. (T. 1340) The only training Zander received consisted of accompanying another salesman for two days. (T. 1342) During the course of his sales presentation, Zander typically showed the client his own license and that of U.S.F.C., and explained contracts for deed by way of an example of how a contract for deed might be created. (T. 1348, 1350) Zander explained the \$3 per month service agreement to his clients and told them that U.S.F.C. bought contracts for deed from real estate companies. (T. 1354) He explained to potential clients that U.S.F.C. would record all the documents. (T. 1350) Zander never had the actual contract for deed in his possession during the sales presentation (T. 1345), nor did he have any specific information on the buyer of the property. (T. 1363) Zander did not mention the possibility of other liens on the property to his customers since he had no specific knowledge of the liens. (T. 1348, 1352) In connection with some of his sales, Zander took photographs of the houses in question and showed these to his prospective customers. (T. 1347)

81. On March 25, 1976, Zander sold a contract for deed on property located at 2916 - 13th Avenue South to Ray Kraemer of Osakis, Minnesota. (T. 1376; Ex. 69, p. 33) Kraemer gave Zander a check in the amount of \$4,001.45, dated March 25, 1976. (Ex. 69, p. 33) The vendee in this contract for deed

was Brentwood Homes, Inc. (Ex. 69, p. 27, 32) Brentwood Homes, Inc. was not, in fact, incorporated, however, until April 9, 1976. (Ex. 43A) The &Arch 22, 1976 inventory for U.S.F.C. listed, in addition to the contract sold to Kraemer, another contract on 2913 - 13th Avenue South in the net amount of \$6,054.55. (Ex. 2, sheet 7)

82. On April 20, 1976, Zander sold a contract for deed to Kenneth and Elaine Senst, who reside in Minneapolis. (T. 1380) Zander explained the \$3

per month maintenance service to the Sensts; however, they elected to manage the contract themselves. (T. 1382; Ex. 64, p. 17) Zander advised the Sensts that there was enough value in the house underlying the contract for deed to support their investment of \$4,004.67. (T. 1383) The contract was on a home located at 3908 - 10th Avenue South, and the contract vendee was Brentwood Homes, Inc. (Ex. 64, p. 18) Zander did not advise the Sensts that this contract had not yet been created at the time of sale. (T. 1385) The market value of and the number of liens against this property at the time of this sale is indicated at Finding of Fact No. 21.

83. On April 7, 1976, Zander sold a contract for deed to Paul Gruben of Tower, Minnesota. (T. 1385; Ex. 76, p. 11) Gruben gave Zander a check in the amount of \$5,782.20, for a contract for deed on property located at 120 Elizabeth with Wellington Homes, Inc. as the vendee. (Ex. 76, p. 10) The Articles of Incorporation of Wellington Homes, Inc. were not filed with the secretary of State until September 1, 1976. (Ex. 44A, T. 1387) U.S.F.C.'s inventory sheet for April 5, 1976 listed not only the contract sold to Gruben, but also another contract in the same amount against 120 Elizabeth. (Ex. 2 sheet 9)

84. Although Zander noticed the names of Spartan Homes, Brentwood Homes and Wellington Homes appearing on highlight sheets during 1976, he did not inquire as to who these companies were and did not discover until October of 1976 that the companies were related to Richard Kennedy. (T. 1364-1365) Zander testified that he did not learn until October of 1976 that more than one contract for deed was being offered by U.S.F.C. on a single property. (T. 1360) Zander did advise his clients that U.S.F.C. would record the documents in connection with the transaction and was aware that as of May or June of 1976, U.S.F.C. was behind in its recording. (T. 1350, 1371, 1373) The Securities Division and U.S.F.C.

85. In the late summer of 1974 prior to the organization of U.S.F.C., Kennedy met with Securities Division personnel to discuss the sale of contracts for deed and mortgages. (T. 2914) Kennedy was advised that there had been problems with these sales in Minnesota in the past. Kennedy stated that he would conduct the business he intended to organize properly. (T. 2915)

86. A meeting was held on November 21, 1974, with Securities Division personnel, Kennedy, Trotter, and U.S.F.C.'s attorney. (T. 2612, 2920, 2922) Kennedy and Trotter stated that U.S.F.C. was at that time offering for sale to Minnesota residents contracts for deed on Ohio campground lots. U.S.F.C. was also acquiring and selling contracts for deed on improved Minnesota residential property. (T. 2612-13, 2923) U.S.F.C. was advised at this meeting that the Ohio contracts might have to be registered as subdivided land or securities. (T. 2614, 2920; Ex. NN) In December, 1974,

the Securities Division asked U.S.F.C. to stop selling the Ohio contracts

until the Securities Division could prepare an opinion on whether or not their sale was exempt from registration. (T. 2614, 2934) U.S.F.C. complied with this request. (T. 613, 615, 3024)

87. By letter dated December 27, 1974, U.S.F.C.'s attorney advised the Securities Division that, according to Gene Trotter, U.S.F.C. would purchase contracts for deed from land developers, do a credit check on the land purchaser and a title opinion on the property and then advise the investor of the results of the title examination and credit check. The letter

also stated that U.S.F.C. would not guarantee against loss nor provide a market for the contracts for deed. (Ex. MM) Another letter received by the Securities Division on January 15, 1975, from U.S.F.C.'s attorney, stated that the investor would be shown a copy of the contract for deed,

assignment of contract for deed, and warranty deed. The letter also stated that credit reports, showing name, address, and occupation of the vendee would be made available to the investor. (Ex. CO)

88. Another meeting occurred in mid-May of 1975, between the Securities Division and Trotter and U.S.F.C.'s attorney. (T. 2615, 2936) Trotter stated that Ridgedale Construction Company was owned by Steven B. Hewitt and was buying undeveloped northern Minnesota land on a contract for deed from Inland Development Corporation owned by a Richard G. Stagg. The vendor's interest in these contracts for deed was then assigned to U.S.F.C. by Inland for re-sale to investors. (T. 2916, 2939, 2941, 2988) Subsequent to this meeting, U.S.F.C.'s attorney advised the Securities Division by a letter dated May 19, 1975, that U.S.F.C. was ceasing to sell contracts for deed on unimproved land, whether or not within the State of Minnesota. The letter stated that U.S.F.C. would continue to sell contracts on residential properties, but would advise prospective purchasers of the property address. (Ex. LL; T. 2902)

89. A subsequent meeting occurred on October 2, 1975, with Trotter, U.S.F.C.'s attorney and Securities Division personnel. (T. 2631-2) Most of the meeting was devoted to U.S.F.C.'s sale of certain mortgages, however, the subject of the sale of residential contracts was also discussed. (T. 2644) The Securities Division understood that U.S.F.C. was buying residential contracts from real estate brokers, securing credit checks on the vendees and appraisals on the property, and providing this information to investors. (T. 2638, 2446, 2683) Based upon this Understanding, the Securities Division did not disapprove U.S.F.C.'s sale of residential contracts. (Ex. II, T. 2637-38) In a December 19, 1975 statement, Trotter told the Securities Division that he did not know the owners of either Inland Development Corporation or Ridgedale Construction Company, (T. 2875) and that U.S.F.C.'s only relationship to Inland was as a real estate broker. (T. 2875; Ex. 100, p. 3) The Securities Division's opinion letter concerning the sale of contracts for deed on undeveloped property, which was requested by U.S.F.C., was not issued. (T. 2885, 2984)

90. In July of 1976, the Securities Division audited the books and records of U.S.F.C. (T. 2617, 2946, 3162) At that time a securities Division investigator advised the salesmen to continue with business as usual. (T. 800, 912) In October of 1976, the Securities Division executed a search warrant at U.S.F.C.'s offices and seized U.S.F.C.'s files. (T. 2039)

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Commissioner of Securities and the Hearing Examiner have jurisdiction in this matter pursuant to Minn. Stat. Sec. 80A.15, Minn. Stat. Sec. 80A.21, Minn. Stat. Sec. 82.27 and Minn. Stat. Sec. 15.052. The above cited statutes provide the Commissioner authority to revoke an exemption from registration of securities, to issue an order requiring a person to cease and desist from offering or selling unregistered securities and to suspend or

revoke the license of a real estate broker or salesperson or to censure the licensee.

2. That the Securities Division gave proper notice of the hearing in this matter and that the Securities Division has fulfilled all relevant substantive and procedural requirements of law or rule.

3. That the following parties failed to appear in this proceeding: Financial Corporation, a/k/a U.S. Financial Corporation, Norma Jean Hill, Gene C. Trotter, Harry T. Earle, Melvin Satz, Spartan Homes, Inc., Brentwood Homes, Inc., Wellington Homes, Inc., Ridgedale Construction Company and Inland Development Corporation. Pursuant to 9 MCAR Sec. 2.028 (Minn. Rule HE 208), these parties are in default and the allegations of the Order for Hearing in regard to these parties are hereby taken as true.

4. That the vendor's interests in contracts for deed described in this Report, both in regard to undeveloped land and residential property, are "evidences of indebtedness" and "investment contracts" within the meaning of Minn. Stat. Sec. 80A.14(q) and are therefore a "security" as defined by Minn. Stat. Sec. 80A.14(q).

5. That none of the vendor's interests in contracts for deed described in this Report have been registered as securities in Minnesota as required by Minn. Stat. Sec. 80A.08, and that neither the vendor's interests in contracts for deed or the transaction in which they were sold fall within any exemption from registration contained in Minn. Stat. Sec. 80A.15.

6. That by the conduct described in this Report, Respondents U.S.F.C., Richard Kennedy, Trotter, Ridgedale, Inland, Spartan, Brentwood, Wellington, Anderson, Beson, Dietrich, Hainlin, Hatcher, Satz, Truax, White and Zander engaged in the sale of unregistered securities in violation of Minn. Stat. Sec. 80A.08.

7. That by the conduct described in this Report in regard to the creation and sale of vendor's interests in the residential contracts for deed involving the use of subsidiary corporations, U.S.F.C., Richard Kennedy, Trotter, Hill, Spartan, Brentwood and Wellington have violated Minn. Stat. Sec. 80A.01 (a), which makes it unlawful to employ, in the sale of securities, any device, scheme or artifice to defraud and Minn. Stat. Sec. 80A.01 (c), which prohibits engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in the sale of a security.

8. That in regard to the sale of contracts for deed interests on the northern Minnesota property, Anderson, Beson, Earle, Hainlin, Satz, Truax, Richard Kennedy, Trotter and Hill violated Minn. Stat. Sec. 80A.01 (b), which prohibits, in regard to the sale of a security, omitting to state material facts necessary to make recommendations and other statements made, in light of the circumstances under which they were made, not misleading, in that they failed to disclose, in regard to these sales:

a. The large difference in purchase price between the price in the contract underlying the sale to the investor and the earlier but almost contemporaneous purchase price by Kennedy or a U.S.F.C. affiliate; or

b. The fact that Richard Kennedy controlled U.S.F.C., Inland, and Ridgedale; or

c. The financial condition of the vendee, Ridgedale, which caused it to default on its contract for deed obligations.

9. That in regard to the sale of contract for deed interests on residential property, Anderson, Beson, Dietrich, Earle, Hainlin, Hatcher, Satz, Truax, White, Zander, Richard Kennedy, Trotter and Hill violated Minn. Stat.

Sec. 80A.01(b) by failing to disclose in regard to these sales:

a. The existence of multiple prior contract for deed interests in regard to the properties.

b. The sale of residential properties between Subsidiary corporations of U.S.F.C. in order to raise the purchase price.

c. The fact that Spartan Homes, Brentwood Homes and Wellington Homes were wholly owned subsidiaries of U.S.F.C.

10. That in regard to the sale of contract for deed interests on all the properties, Anderson (Finding of Fact Nos. 39, 43), Beson (Finding of Fact Nos. 55, 56), Dietrich (Finding of Fact No. 50), Earle, Hainlin (Finding of Fact Nos. 66, 67, 72), Hatcher (Finding of Fact No. 60), Satz, Truax (Finding of Fact Nos. 31, 33), White (Finding of Fact No. 76), and Zander (Finding of Fact No. 80) each violated Minn. Stat. Etc. 80A. 01 (b) , which prohibits making an untrue statement of a material fact by advising potential purchasers that U.S.F.C. would record all of the real estate documents involved in the investment.

11. That Harry Earle and Melvin Satz violated Minn. Stat. Sec. 80A.01(b) ,Minn prohibits making untrue statements of material facts in connection with the offer or sale of a security and Minn. Rule SDiv 1508(aa) and Minn. Stat. Sec. 82.27(1)(b) by making the statements set out at pages 28, 29 and 30 of the Order for Hearing which are taken as true pursuant to 9 MCAR Sec. 2.208 (Minn. Rule HE 208).

12. That Andrew P. Anderson violated Minn. Stat. Sec. 80A.01(b) which prohibits making untrue statements of material facts in connection with the sale of a security and Minn. Stat. Sec. 82.27(1)(b) which prohibits fraudulent, deceptive and dishonest practices and Minn. Rule SDiv 1508(aa) which prohibits making any material misrepresentation and Minn. Rule SDiv 1508(bb) which prohibits false statements likely to influence the consummation of a transaction, by advising Mr. Rutgers that U.S.F.C. bought contracts for deed from savings and loan associations. (Finding of Fact No. 40) The Securities Division failed to prove the other allegations of untrue statements by Anderson.

13. That the Securities Division failed to prove its allegations of

untrue statements in violation of Minn. Stat. Sec. 80A.01(b), Minn. Rule SDiv 1508(aa) and (bb) and Minn. Stat. Sec. 82.27(1)(b) in regard to Everet E. Beson.

14. That Gerald A. Dietrich violated Minn. Stat. Sec. 80A.01(b), Minn. Rule SDiv 1508(aa) and (bb) and Minn. Stat. Sec. 82.27(1)(b) by telling Mr. Hartmann that the homes securing the contracts for deed were in the

\$30,000 range. (See Finding of Fact Nos. 50, 51, 19-22) That the Securities Division failed to prove its other allegations of untrue statements by Dietrich.

15. That Douglas M. Hainlin violated Minn. Stat. Sec. 80A.01(b), Minn.

Rule SDiv 1508(aa) and (bb) and Minn. Stat. Sec. 82.27(1)(b) by:

a. Telling Mr. Porter that there was a possibility that U.S.F.C.

would repurchase its contract. (See Finding of Fact No. 72)

b. Telling Mr. Christianson that with a \$2,000 investment die house securing the contract would be worth approximately \$30,000. (See Finding of Fact Nos. 69, 70, 20)

The Securities Division failed to prove its other allegations of an untrue statement by Hainlin.

16. That Earl W. Hatcher violated Minn. Stat. Sec. 80A.01(b), Rule SDiv 1508(aa) and (bb) and Mimi. Stat. Sec. 82.27(1)(b) by telling Mr.

Connors that the homes underlying the contracts were appraised at \$35,000 and

up and that the person making payments on the contract had a good credit rating. (See Finding of Fact Nos. 61-62)

17 That Earl L. Truax violated Minn. Stat. Sec. 80A.01(b), Minn. Rule

SDiv 1508(aa) and (bb) and Minn. Stat. Sec. 82.27(i)(b) by telling Mrs. Lovejoy that the properties underlying the contracts for deed were worth at least \$1,000 more than the liens against them and that the purchasers of the contracts had "AAA" credit ratings. (See Finding of Fact Nos. 33-34, 19-22)

That the Securities Division failed to prove its other allegation of an untrue statement in regard to Truax.

18. That by the conduct described in this Report, U.S.F.C., Trotter and

Hill have violated Minn. Rule 1508(bb) which prohibits real estate licensees

from engaging in a continued course of misrepresentation or making false statements through agents, salespersons, advertising or otherwise and Minn.

Stat. Sec. 82.27(1)(b) which prohibits licensees from engaging in fraudulent, deceptive or dishonest practices.

19. That by the conduct described in this Report, Anderson, Beson, Dietrich, Earle, Hainlin, Hatcher, Satz, Truax, White and Zander have violated Minn. Stat. Sec. 82.27(1)(b) prohibiting licensees from engaging in fraudulent, deceptive or dishonest practices and Minn. Stat. Sec. 80A.01(c)

which prohibits engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any parson in the sale of a security.

20. That the Conclusions made above are grounded upon the reasons set out in the Memorandum attached hereto which is incorporated herein by reference.

RECOMMENDATIONS

1. It is recommended that the Commissioner of Securities issue a
cease
and desist order pursuant to Minn. Stat. Sec. 80A.21, prohibiting
Financial
Corporation, a/k/a U.S. Financial Corporation, Richard J. Kennedy, Norma
Jean
Hill, Gene C. Trotter, Andrew P. Anderson, Everet E. Beson, Gerald A.
Dietrich,
Harry T. Earle, Douglas Ml. Hainlin, Earl W. Hatcher, Melvin Satz, Earl L.

Truax, Robert T. White, Fred G. Zander, Spartan Homes, Inc., Brentwood Homes, Inc., Wellington Homes, Inc., Ridgedale Construction Company and Inland Development Corporation from offering or selling the vendor's interest in contracts for deed described in this Report.

2. It is recommended that the Commissioner of Securities deny and/or revoke any claimed exemption within the meaning of Minn. Stat. Sec. 80A.15, in regard to the contract for deed interests described in this Report.

3. It is recommended that disciplinary action be taken in regard to the real estate licenses of Financial Corporation, a/k/a U.S. Financial Corporation, Norma Jean Hill, Gene C. Trotter, Andrew P. Anderson, Everet E. Beson, Gerald A. Dietrich, Harry T. Earle, Douglas M. Hainlin, Earl W. Hatcher, Melvin Satz, Earl W. Truax, Robert T. White and Fred G. Zander pursuant to Minn. Stat. Sec. 82.27.

Dated: October 30, 1978.

GEORGE A. BECK
Hearing Examiner

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Securities will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. Sec. 15.0421, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner to ascertain the procedure for filing exceptions or presenting argument.

I
M E M O R A N D U M

The nature of the vendor's interest in a contract for deed and the manner of sale by the respondents bring it within the definition of "investment contract" as delineated by the Minnesota Supreme Court. In the leading case of State v. Gopher Tire & Rubber Co., 146 Minn. 52, 177 N.W. 937

(1920), the Court first defined the term investment contract and stated, "The placing of capital or laying out of money in a way intended to secure income or profit from its employment is an investment as that word is commonly used and understood." 177 N.W. at 938. The Court has consistently refused to place a narrow construction on what is included within the definition of a security based upon the belief that such an interpretation is necessary in order to "curb the activities of those who by ingenious subterfuge or by fraudulent means seem bent on disposing to the ignorant and gullible fraudulent or speculative securities". State v. Hofacre, 206 Minn. 167, 288 N.W. 13, 16 (1939).

A recent decision of the Minnesota Supreme Court presents a factual situation close to this case. In State v. Investors Security Corporation, 297 Minn. 1, 209 N.W.2d 405 (1973), our Court found that the sale of an Arizona land developer's vendor's interest in a contract for deed on raw land in Arizona to Minnesota investors constituted an investment contract. Investors Security Corporation (ISC) discounted the face value of the instruments in an amount sufficient for the investor to receive an annual yield of 10% to 12%. The Court noted that ISC did not provide investors with appraisals on the land, or data on land values, or information as to proposed improvements of the land, or any information on other encumbrances or information as to what percentage of the value of the land is represented by the individual contract, or any credit information on the land purchaser. 209 N.W.2d at 407. ISC placed ads in newspapers promising 10% to 12% interest and investments were sold in accordance with the amount of money the investor had to invest. ISC promised recourse against itself or the developer in the event of default.

The court noted that it has traditionally adhered to a flexible definition of the term "investment contract" and stated that:

The great distance between the investor and the maker of the note and the underlying land renders collection or foreclosure, in the event of default, a practical impossibility for the investor, necessitating reliance upon the commitments and guarantees of ISC and the developer. 'The ability of ISC and the developer to make good their obligation to the investor is indeed "the thread on which everybody's beads are strung.'" S. E. C. v. C. M. Joiner Leasing Corp., 320 U.S. 344, 348, 64 S.Ct. 120, 122, 88 L.Ed. 88, 92. Without question, the economic welfare of

the investor is inextricably interwoven with the financial prospects of the developer and ISC and the continuing ability of the developer to honor its endorsement of the land purchaser's note and mortgage. See, *Los Angeles Trust Deed & Mortgage Exch. v. S. E. C.*, 285 F. 2d 162 (9 Cir. 1960), certiorari denied 366 U.S. 919, 81 S.Ct. 1095, 6 L.Ed.2d 241 (1961). 209 N. W.2d at 411.

As this case indicates, one element of an investment contract is necessary reliance on the persons offering the investment in order to profit or avoid loss. See also, *State v. Coin Wholesalers, Inc.*, 250 N.W.2d 583 (1976).

In the case of U.S. F. C., investors could not rely on the real estate involved since the liens usually exceeded the actual market value. In regard to the northern Minnesota property investors were dependent upon U.S.F.C.'s development of the land to realize their payments. In the case of the residential property, investors could not rely on Spartan, Brentwood or Wellington since these subsidiaries had no assets; investors again had to rely on the success of U.S.F.C. All of the payments made to investors came from U.S.F.C.

The Minnesota Court has cited with approval (e.g., State v. Lorentz, 221 Minn. 366, 22 N.W.2d 313 (1946)), the language of SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352 (1943), where the U.S. Supreme Court stated that, -In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be." The mailing sent out to prospective customers by U.S.F.C. (Finding of Fact No. 24) repeatedly stressed the investment nature of U.S.F.C.'s product. The contracts were compared to stocks and savings accounts, as a superior form of investment.

In SEC v. Lake Havasu Estate; (D.C. Minn.) 340 F.Supp. 1318 (1972) Judge Larson found an investment contract under the federal Act where the investors in land purchase contracts relied on the seller for selection of land, selection of the land purchaser, selection of the specific contract to be sold to the investor, collection agent services, guarantee of monthly payments, guarantee of replacement of any land purchase agreement which was defaulted, and arrangements for transfers and recordings among seller, the land purchaser and the investor. 340 F.Supp. at 1321.

It also appears that the vendor's interest in a contract for deed involved in this case would fall within the definition of 'evidence of indebtedness' as defined by the Court in U.S. v. Austin, 462 F.2d 724, cert. denied 409 U.S. 1048 (10th Cir. 1972). The Austin Court, in the context of a criminal securities fraud case, stated that:

The term of evidence of indebtedness is not limited to a promissory note or other simple acknowledgment of a debt owing and is held to include all contractual obligations to pay in the future for consideration presently received. 462 F.2d at 736.

The contracts sold by U.S.F.C. were contractual obligations by which the vendor agreed to give up present possession of the real property to the vendee and to convey the real property in the future in return for the contract vendee's promise to pay for the property over a period of time.

The record supports the conclusion that varying degrees of culpability

exist among the respondents for the fraudulent scheme employed in the sale of these contract for deed interests. Richard Kennedy, Trotter, and Hill were the principals and organizers of this scheme which resulted in the loss of hundreds of thousands of dollars for Minnesota investors. They collaborated to organize and manipulate the five affiliated or subsidiary corporations of U.S.F.C. used to inflate, through sham sales, the purchase price of the raw land and residential property far beyond its actual market value. This having been accomplished, one or several contract for deed interests were created on the property and then sold to investors. The most

fraudulent aspect of the scheme was that the accumulated contract interest created by U.S.F.C. were far larger than the actual market value of the property. So while it appeared to an investor that a \$2,000 contract interest recordal against what appeared to be a \$30,000 house was indeed a safe investment, the actual situation was far different. Many investors lost all of their money.

There is no real dispute that the salesmen respondents did in fact sell these unregistered securities or that they failed to disclose certain facts to investors. The defense presented by the salesmen in their briefs in regard to the sale of unregistered securities is that they did not know that what they were selling was a security. The salesmen did inquire at sales meetings about the legality of the product and were advised that the Securities Division was preparing an opinion on the subject, but that sales could continue. It is true that in the numerous contacts between the Division and U.S.F.C. principals and salesmen documented in this record, no one with the Division ever stated to those associated with U.S.F.C. that the sales were illegal and had to cease, at least prior to the seizure of U.S.F.C.'s records in October of 1976. This may have been due to the fact that the Division had incomplete and inaccurate knowledge of the methods used to create and market the contracts.

The fact that the salesmen were unaware that as a matter of law they were engaged in the sale of securities does not constitute a defense. In SEC v. W. J. Howey Company, 328 U.S. 293 (1946), the Court found the sale of interests in a citrus grove through land sale contracts, warranty deeds and service contracts, to constitute an investment contract. The Court noted that the "respondents failure to abide by the statutory and administrative rules in making such offerings, even though the failure result from a bona fide mistake as to the law, cannot be sanctioned under the Act". 328 U.S. at 300. That they expected the Securities Division to give an opinion on the legality question does not excuse the respondents since reliance on government inaction will not provide a valid defense. In Feeney v. SEC, 564 F.2d 260 (8th Cir. 1977), the Court rejected the securities salesmen's contention that since no governmental action was taken to prevent the sale, the salesmen were entitled to assume the notes in question were a good investment. 564 F.2d at 262. The Court also rejected the salesmen's claim that they were entitled to rely on the assurances of company officers that registration was

not required and stated that, "This court has recently recognized that ignoring the obvious need for further inquiry and reckless indifference to suspicious facts will support a finding of a violation. 564 F.2d at 262.

The salesmen have also suggested that the reason they failed to disclose certain material facts to investors was that they were unaware of those facts. The factors set out in Conclusion Mos. 8 and 9 were, as the record amply demonstrates, necessary to any reasonable evaluation of the worth of the investments being offered. without the disclosure of these facts, the investors were seriously misled. Setting aside the question of whether the Division must show knowledge or intent to defraud, there were a number of

facts which the salesmen must have known and which would obviously have affected the value of the investment they were selling. The increasingly large number of contracts in the weekly inventory in 1976, with either Spartan, Brentwood, or Wellington as the vendee, should have been a red flag to the salesmen indicating an unusual situation. It became common in 1976, that the inventory would list more than one contract on a single property address. Truax, Anderson, Dietrich, Hatcher, Hainlin, White and Zander each sold a contract on a property when that week's inventory listed at least one other contract on the property for sale. Truax, Anderson and Hainlin actually sold more than one contract interest for the same property address. Truax, Anderson, Dietrich and Hainlin acknowledged that they realized that more than one contract was being sold on a single property and inquired about it.

As the Securities Division suggests, some relatively easy checking could have uncovered several facts. The Secretary of State's office could have been contacted to ascertain when Spartan, Wellington and Brentwood were organized and who was listed as their officers. A review of the chain of title on the northern Minnesota properties would have disclosed Richard Kennedy's and Richard Stagg's involvement. Had the salesmen requested to have the actual contract for deed in their possession at the time of sale, two problems would have been solved. They would not have sold contracts not yet created, and they would have known the prior liens existing against the property. It must have been obvious to the salesmen that the interests they were selling were of much less value if the liens against the property exceeded the market value. It must also have been clear that the credit rating or financial stability of the vendee of the contract greatly affected the value of the product being sold. The salesmen emphasized to customers that U.S.F.C. carefully evaluated both the credit rating of the buyer and the value of the property. Yet, the salesmen had no and did not request any specific documentation of this claim to present to prospective investors.

It appears less likely that most of the salesmen were aware of Richard Kennedy's control of Ridgedale, Inland, Spartan, Brentwood, or Wellington or that they had knowledge of the sales designed to inflate the purchase price. The salesmen were not a part of management nor generally privy to, the deliberations among Kennedy, Trotter or Hill. Some salesmen did, almost accidentally, gain specific knowledge. Truax knew that Kennedy owned Ridgedale and was told that Kennedy's son owned Spartan, Brentwood and Wellington. Due to his function of buying homes for U.S.F.C., Beson assumed Spartan was connected to U.S.F.C. when it appeared at the closing as seller. Hainlin learned that Jean Hill was President of either Spartan, Brentwood, or Wel-

lington and he knew that U.S.F.C. salesman Richard Stagg was President of Inland.

This lack of knowledge of some of the material facts on the part of some of the salesmen does not mean that there is no violation of Minnesota law. Generally, specific intent need not be proved in showing a violation of law by a licensee in a regulated trade. Hanley v. S.F.C., 415 F.2d 589 (2nd Cir. 1969) held that specific intent to defraud is irrelevant to SEC enforcement proceedings. This is appropriate for both securities and real estate

licensees since the licensing statutes are designed to protect the public from incompetent, careless, or reckless brokers or salespersons, even though their action may not have resulted from a specific intent to do wrong. It should be noted that the salesmen emphasized their licensed and bonded status to investors, thereby giving their recommendations greater credibility. The knowledge or intent of specific respondents may appropriately be considered in regard to the severity of the sanction given.

Although the salesmen may not have known as much as the principals about U.S.F.C.'s activities, it is nonetheless true that the deceptive aspects of the scheme were carried out by the salesmen as they contacted investors. The salesmen stressed that this investment was secure because it was backed by real estate. It was either explicitly or impliedly stated

that the liens on the property would not exceed the market value. The examples used to explain the creation of a contract for deed involved only a single contract for deed on a property. The high yield available on the investment was always stressed and compared to bank savings account interest.

The salesmen pointed out that both they and U.S.F.C. were licensed and bonded. Although the salesmen did not promise that U.S.F.C. would repurchase

defaulted contracts, they often stated that U.S.F.C. "could" buy the contract

back just like any other person in the market. Sales were commonly made to

persons living a good distance from the location of the real estate so that no inspection was likely.

Each of the respondent salesmen told their customers that U.S.F.C. would

record the documents associated with their investment. In fact, this was either not done or in a few instances, incompletely done. Recording of the

documents could have been an important element in providing the investor some security. The salesmen received complaints from their customers about

not receiving documents and the salesmen in turn complained to U.S.F.C. about

the failure to record. Trotter inaccurately advised the salesmen that the delay was at the courthouse. Salesman Robert White testified that it was common knowledge around the office that the contracts were not being recorded

(Finding of Fact No. 76), yet the salesmen continued to advise their customers that it would be done. The burden was on U.S.F.C. to actually record

the documents, and Trotter continued to assure the salesmen it would eventually be accomplished. However, it was incumbent upon the salesmen not to

misrepresent what was actually being done or not done by U.S.F.C. The Findings document the number of investors who never received any recorded documents.

As indicated earlier, the record shows a different level of misconduct as between the management of the firm and the salesmen. Management intentionally organized and perpetrated the fraud. The salesmen, although parti-

cipants, were less aware of all the fraudulent aspects of the scheme and were less sophisticated concerning whether or not the product being sold might be properly within the definition of a security. The record also reveals varying culpability among the salesmen both in regard to their knowledge of the scheme and in their conduct in the course of presentations to potential customers. The disciplinary action should reflect this situation together

with the fact that the Securities Division had not announced a comprehensive policy concerning the sale of vendor's interest in contract for deeds.

G.A.B.